

No. 4 carefully compared, and finds the same correctly engrossed.

ALDERDICE, Chairman.

### Committee Reports.

(Floor Report.)

Senate Chamber,  
Austin, Texas, August 31, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 5, A bill to be entitled "An Act making an appropriation of the sum of sixty-five thousand dollars, or so much thereof as may be necessary, out of the general revenue, not otherwise appropriated, to pay the mileage and per diem of members and the salaries and per diem of officers and employes of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, providing how accounts may be approved, and declaring an emergency,"

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass and be not printed.

Caldwell, Vice Chairman; Decherd, Hopkins, Johnson, Bee, Dean, Clark.

(Floor Report.)

Senate Chamber,  
Austin, Texas, August 31, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 4, A bill to be entitled "An Act making an appropriation of the sum of twenty-five thousand dollars, or so much thereof as may be necessary, to pay the contingent expenses of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, convened on August 31, 1917, by proclamation of the Acting Governor, providing how accounts may be approved and declaring an emergency,"

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass and be not printed.

Caldwell, Vice Chairman; Decherd, Hopkins, Johnson, Bee, Dean, Clark.

### SECOND DAY.

Senate Chamber,  
Austin, Texas,  
September 3, 1917.

The Senate met at 9:40 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

|                     |                     |
|---------------------|---------------------|
| Alderdice.          | Hopkins.            |
| Bailey.             | Hudspeth.           |
| Bee.                | Johnson of Hall.    |
| Buchanan of Bell.   | Johnston of Harris. |
| Buchanan of Scurry. | Lattimore.          |
| Caldwell.           | McCollum.           |
| Clark.              | Page.               |
| Dayton.             | Robbins.            |
| Dean.               | Smith.              |
| Decherd.            | Strickland.         |
| Floyd.              | Suiter.             |
| Gibson.             | Westbrook.          |
| Hall.               | Woodward.           |
| Harley.             |                     |

Absent.

|            |       |
|------------|-------|
| Henderson. | Farr. |
| McNealus.  |       |

Prayer by Rev. Mitchell, Chaplain of the House.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

### Petitions and Memorials.

See Appendix.

### Message From the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with a message from the Governor.

The Chair directed the Secretary to read the same which was as follows:

Governor's Office,  
Austin, Texas, Sept. 3, 1917.

To the Texas State Senate:

I ask the advice, consent and confirmation of the Senate to the appointment of Mr. John Sealy of Galveston, Texas, to be a member of the Board of Regents of the Univer-

sity of Texas, in place of Dr. A. W. Fly.

Respectfully submitted,  
W. P. HOBBY,  
Acting Governor of Texas,

#### Executive Session—Time Set.

Senator Lattimore moved that the foregoing appointment be referred to the Committee on Nominations with instruction to report on same tomorrow, and that 9:30 o'clock, Tuesday (tomorrow) morning, be set as the hour for executive session for consideration of this nomination, and all others heretofore sent up by the Governor.

The motion prevailed.

#### Simple Resolution No. 7.

(By unanimous consent.)

Resolved, That the Sergeant-at-Arms be directed, during the impeachment trial, to move the desks of the senators forward as far as will make them convenient to the counsel and the witnesses, and at the close of each trial day, move the desks back to their present positions, and that a rope or railing be stretched across the Senate during the trial, back of the seats of the senators, and no one be allowed inside of said railed off space unless especially called by a senator.

BEE.

The resolution was read and laid on the table subject to call.

#### Senator V. A. Collins, Elect.

Senator Lattimore moved that the matter of the legality of the election of Senator V. A. Collins of the Fourteenth Senatorial District be referred to the Attorney General for an opinion.

As a substitute Senator Hudspeth moved that Senator Collins be brought before the bar of the Senate for the purpose of taking the oath of office and that he be seated at once as a member of this body.

The substitute motion was lost by the following vote:

Yeas—11.

|                     |                  |
|---------------------|------------------|
| Alderdice.          | Hudspeth.        |
| Buchanan of Scurry. | Johnson of Hall. |
| Dayton.             | Robbins.         |
| Floyd.              | Smith.           |
| Gibson.             | Suiter.          |
| Hopkins.            |                  |

Nays—14.

|           |                     |
|-----------|---------------------|
| Bailey.   | Johnston of Harris. |
| Bee.      | Lattimore.          |
| Caldwell. | McCollum.           |
| Clark.    | Page.               |
| Dean.     | Strickland.         |
| Decherd.  | Westbrook.          |
| Hall.     | Woodward.           |

Present—Not Voting.

Buchanan of Bell.

Absent.

|            |           |
|------------|-----------|
| Harley.    | McNealus. |
| Henderson. | Parr.     |

Reasons for Vote.

In voting "No" on the resolution seating Senator V. A. Collins, we do so with a high sense of personal appreciation of Senator Collins.

We are impelled to this vote because in our opinion Article 2933 provides that in case of a vacancy in either house of the Legislature during its session or either ten days before it convenes, twenty days' notice of a special election shall be sufficient, but that otherwise the notice shall be issued not less than thirty days before the election as provided by Article 2929 of the Statutes. There can be no escape from the conclusion that the law contemplated the giving of a sufficient opportunity for the expression of the popular will. It therefore follows that a notice of election issued on Friday, for an election on the following Monday, in a district containing ten counties would not be a legal notice.

The statutes were enacted for a specific purpose and a disregard of its provisions, establishes a precedent dangerous to the best interests of the commonwealth.

BEE,  
JOHNSTON of Harris,  
PAGE.

As a substitute for the pending motion Senator Bailey moved that the matter of the election of Senator Col-

lins be referred to the Committee on Privileges and Elections with instructions to obtain the opinion of Attorney General and report back to the Senate tomorrow morning.

Senator Page moved to table the substitute and the motion to table prevailed.

Action recurred upon the motion of Senator Lattimore and the same prevailed.

The substance of the request to the Attorney General is as follows:

General Looney: The Senate has just adopted a verbal resolution asking you for an opinion as to the legality of the election of Hon. V. A. Collins of the Fourteenth District who was elected at an election held on August 27th, in pursuance of a proclamation by the Governor on August 24th. There is no contest presented to the Senate from the electors of the district; none of fraud—but merely a desire on the part of certain Senators to know the legality of said election.

#### Assistant Doorkeeper Elected.

Senator Dayton moved that John Ussery be elected as Assistant Doorkeeper in lieu of Nichols who failed to qualify as such.

The motion prevailed.

Senator Dayton moved that the Secretary of the Senate be instructed to cast the vote of the Senate for John Ussery for the position of Assistant Doorkeeper of the Senate.

The motion prevailed, the Secretary cast the vote and the Chair declared Mr. Ussery duly elected.

#### The Senate as Court of Impeachment.

At 10:45 o'clock a. m. Senator Lattimore moved that the Senate do now resolve itself into a Court of Impeachment for the trial of Governor Jas. E. Ferguson.

The motion prevailed.

#### PROCEEDINGS.

Monday, September 3, 1917.

Morning Session.

Senate Chamber, Austin, Texas.

Pursuant to adjournment, the Senate resolved itself into a High Court

of Impeachment at 10:45 o'clock a. m.

Honorable W. L. Dean, President Pro Tempore, presiding.

The Board of Managers and their counsel were present.

The Respondent and his counsel were present.

The Chair: What is the pleasure of the Senate?

Senator Lattimore: I move that we resolve ourselves into a Court of Impeachment.

Senator Caldwell: Mr. President, I move that the Senate resolve itself into a Court of Impeachment.

The Chair: The Senator from Tarrant has just made that motion. It is moved that the Senate now resolve itself into a Court of Impeachment. All in favor of that motion say "Aye;" those opposed, "No."

(The motion prevailed.)

The Chair: The Sergeant-at-Arms will give notice that the Senate has now resolved itself into a Court of Impeachment.

Sergeant-at-Arms, (at the door of the Senate): Oyez! Oyez! Oyez! the Senate sitting as a Court of Impeachment is now in session.

The Chair: The Chair will request the Senator from El Paso and the Senator from Hunt to come forward and take the oath as members of the Court of Impeachment.

(Thereupon Senator Hudspeth and Senator Westbrook presented themselves at the bar of the Senate and the following oath was administered to them by the Chair, viz.:)

Do you, and each of you, solemnly swear that you will impartially try James E. Ferguson, Governor of Texas, upon the impeachment charges submitted to you by the House of Representatives, and a true verdict render according to the law and the evidence, so help you God?

Senator Dayton: Mr. President.

The Chair: The Senator from Cooke.

Senator Dayton: In view of the fact that we will need all the help we can get, I move that the Chair administer the oath now to the Assistant Doorkeeper.

The Chair: The Senate has resolved itself into a Court of Impeachment now, and I suggest that Mr. Ussery can serve and the oath

will be administered to Mr. Ussey later. I want all in the galleries, as well as all visitors in this Chamber, and all members of this Court, to observe the very best order possible at all times during the progress of this trial. What is the pleasure of Counsel?

General Crane: Mr. President, the first thing in order, I presume, is the reading of the Articles of Impeachment. We will ask the Reading Clerk to read those now.

Senator Hanger: As well as the Answer—when the reading of the Articles is concluded we will ask that the Answer be read also.

The Chair: The Secretary will now read the Articles of Impeachment presented by the House of Representatives against the Governor of the State.

(Thereupon the Reading Clerk read the Articles of Impeachment, as follows, to wit):

#### Articles of Impeachment.

Articles adopted and exhibited by the House of Representatives in their name and in the name of the people of the State against James E. Ferguson, Governor of Texas, in maintenance and support of their impeachment against him and in accordance with the resolution adopted by Committee of the Whole House, which resolution was reported to the House of Representatives and by them adopted.

Article 1. That there was paid from the funds of the Canyon City Normal School deposited with the Temple State Bank on August 23, 1915, a note of \$5,000 together with \$600 interest due by James E. Ferguson to the First National Bank of Temple, Texas. That said amount has never been refunded to the State of Texas. That in part payment of the total due for the building of the Canyon City Normal College he used other funds, a portion of which belonged to the State, and the balance being in his hands as Governor, and deposited to his credit as Governor in the American National Bank of

Austin, which acts constitute a violation of law.

Article 2. That James E. Ferguson received from former Governor O. B. Colquitt more than \$101,000, the proceeds from insurance policies on the Canyon City Normal School. That at the time said moneys were turned over to him they were on deposit in banks bearing interest at from four and one-half to five per cent and which was amply secured. That he placed about \$40,000 of same in the Temple State Bank, more than \$20,000 of which remained there for approximately one year, and that he deposited the other amounts in banks in which he was interested as a stockholder, and in the American National Bank, to which he shortly afterwards became indebted. That he received direct and personal profit as a stockholder of the Temple State Bank from the deposit placed with it; thus using and misapplying State funds for his individual benefit and profit.

Article 3. That James E. Ferguson testified under oath on March 11th and 12th, 1917, before the House Investigating Committee that he had made arrangements with the Houston National Exchange Bank to take up two certain promissory notes, one signed by A. F. Ferguson and one signed by J. H. Davis, Jr., each for the sum of \$37,500. That he further testified that he was not indebted to the Temple State Bank at that time. That as a matter of fact the indebtedness represented by the said notes was the personal indebtedness of the said James E. Ferguson, and the said notes had been executed by said A. F. Ferguson and J. H. Davis, Jr., at the instance of James E. Ferguson and for his accommodation. That he had guaranteed the payment of both of said notes, the makers whereof were utterly unable to pay them, which said fact was known to James E. Ferguson. That said notes were actually transferred to the Houston National Exchange Bank for a period of about ten days only with the endorsement of and guarantee of the Temple State Bank and the agreement to repurchase within a few days, and the added obligation that said



Temple State Bank should maintain, during the period of time the notes should be held by said Houston Exchange National Bank, on deposit with said bank, an average daily and compensating balance in an amount equal to the total amount of said notes, to wit, \$75,000. That as a matter of fact said James E. Ferguson was still liable on said notes, and same were transferred only for a period of ten days, and that said transfer of the notes was not bona fide.

Article 4. That James E. Ferguson testified before the former House Investigating Committee within sixty days prior to his giving said testimony he had caused to be paid into the Temple State Bank \$112,500 and \$15,000. In other words, \$127,500 in cash to the Temple State Bank. That as a matter of fact \$75,000 of said amount was represented by the A. F. Ferguson note and the J. H. Davis note of \$37,500 each, and that same were not paid to the Temple State Bank in cash, but were only transferred to the Houston National Exchange Bank to be held for a period of about ten days. That as a matter of fact said notes were still due by James E. Ferguson, because the makers within his knowledge were not able to pay same, and he had guaranteed same in writing to the Temple State Bank. That said transfer did not relieve the Temple State Bank of the excessive loan of James E. Ferguson, because said two notes were endorsed and payment guaranteed by the Temple State Bank; and the said James E. Ferguson and the Temple State Bank knew that after a period of about ten days said notes could be returned to the Temple State Bank. That said two notes were actually returned to the Temple State Bank, and that after said committee had adjourned the Temple State Bank was carrying again the same two notes in violation of the laws of the State of Texas.

Article 5. That James E. Ferguson testified under oath before the House Investigating Committee on March 11th and 12th, 1917, that he was not indebted to the Temple State Bank. That at said time he owed the said bank a note for \$11,243.07 on which there had been paid by him on February 13th, 1917, and less than a month before he testified, the sum of about \$3,029, leaving a balance due

on said note of more than \$8,000 which was then owing to the Temple State Bank, and was not paid until June 16th, 1917.

Article 6. That there was deposited by James E. Ferguson in the Temple State Bank on or about the month of January, 1917, the sum of \$60,000 belonging to the State of Texas and in the possession of the Secretary of State by virtue of his office, said amount being represented by a check of the Secretary of State, although the State Treasury was open for the purpose of receiving same. That James E. Ferguson was a stockholder in said bank, owning more than one-fourth of the stock and that the said Temple State Bank and James E. Ferguson used said funds and received the profit and benefit, the said James E. Ferguson receiving more than one-fourth of the profits and of the benefits.

Article 7. That on or about May 29th, 1917, James E. Ferguson accompanied T. H. Heard, president of the Temple State Bank, to the American National Bank at Austin, and the said T. H. Heard deposited to the credit of the Temple State Bank with the knowledge and consent of the said James E. Ferguson, the sum of \$250,000 of the funds belonging to the State of Texas and in the possession of the Secretary of State, said funds being represented by five checks drawn by the Secretary of State in the sum of \$50,000 each, although the State Treasury was then and there open for the purpose of receiving same. That the said James E. Ferguson owned more than one-fourth of the stock of the Temple State Bank and that said amount was used by the Temple State Bank for its own profit and benefit, more than one-fourth of which profit and benefit belonged to James E. Ferguson.

Article 8. That James E. Ferguson sought to have the State Highway Commissioner deposit State funds of that department with the Temple State Bank so that said bank might receive the profit and benefit from same, and he being a heavy stockholder would have received a portion of the benefits. That he also had, or permitted, other departments of the State government to deposit money with the Temple State Bank, or with other banks, to the credit of the Temple State Bank, said amounts belonging to the State of Texas, and that the Temple State

Bank profited from the use of said funds, and the said James E. Ferguson received more than one-fourth of the profit and benefit.

Article 9. That the said James E. Ferguson has himself deposited, or caused or permitted to be deposited, funds in banks when the Treasury of the State of Texas was open for business, which funds should have been in the State Treasury. That he has used and permitted the use of funds by officers appointed by him for purposes other than the paying of same into the Treasury of this State, said funds being substantially as follows:

(a) That about the month of January, 1917, he deposited with the Temple State Bank the sum of \$60,000.00 of funds in the possession of the Secretary of State.

(b) That on May 29, 1917, in company with T. H. Heard, President of the Temple State Bank, he permitted the deposit of funds in the possession of the Secretary of State to the credit of the Temple State Bank in an amount of \$250,000.00.

(c) That he permitted the Commissioner of the Insurance and Banking Department to deposit funds during the year 1916 with the Temple State Bank in an amount of more than \$101,000.00.

(d) That each and all of the above acts were knowingly and wilfully committed by the said James E. Ferguson.

Article 10. That on March 3, 1917, he stated in a public speech before the House of Representatives, which body had under consideration a resolution to investigate charges of official misconduct against him (one of said charges being borrowing more money from the Temple State Bank than was authorized by the laws of Texas), that he was not indebted to the said bank in any amount whatsoever, when as a matter of fact he was indebted to same at that time for more than was authorized by law.

Article 11. That in this investigation of James E. Ferguson by the Committee of the Whole House of Representatives said James E. Ferguson testified that during the Regular Session of the Thirty-fifth Legislature and shortly thereafter he received from parties certain currency in varying amounts, the total of which was about \$156,500.00. That said transaction is unusual and questionable, and that the said James

E. Ferguson when questioned as to who loaned him this money declined to answer, although the officer of the Committee of the Whole appointed to pass on the admissibility of testimony ruled that he should answer, and the Committee sustained said ruling. That he is thus not only in contempt of the House and its Committee, but he insists that he is not required to give before the representatives of the people of Texas an accounting of said \$156,500.00 in currency which he received during sessions of the Legislature or shortly thereafter, and the receipt of such sums in currency, and the failure to account for same constitutes official misconduct.

Article 12. That James E. Ferguson had on deposit during the year 1916 in the American National Bank to his account as Governor certain sums of money belonging to the Adjutant General's Department of Texas aggregating more than \$3,000.00, said funds being the property of the State of Texas but set aside for that department. That in violation of the statutes of Texas he diverted these funds from their lawful purpose and paid same as a portion of the amount for the construction of buildings of the Normal College located at Canyon City.

Article 13. That at the former investigation of Governor James E. Ferguson he was specifically charged with the misapplication of moneys of the State of Texas in the purchase of groceries, feed, automobile tires, gasoline, etc. The committee appointed by the House of Representatives found that he did so misapply several thousand dollars and converted same to his own use in the purchase of the items above enumerated. That before that committee Governor Ferguson testified under oath that if the case of Middleton vs. Terrell, Comptroller, should be decided by the Supreme Court against him that he would refund to the State of Texas such amounts misappropriated by him in accordance with said decision. The Supreme Court long ago refused an application for writ of error and overruled a motion for rehearing, thus deciding against him, but James E. Ferguson is still indebted under said decision to the State of Texas for groceries, feed, automobile tires, gasoline, etc., which were for his private use but which were paid with State funds, and he has failed to pay same in accordance with his oath be-

fore said committee of the House of Representatives. The report of the House investigating committee stated that the charge of misapplication of funds should not justify the serious penalty of impeachment, inasmuch as Governor Ferguson had testified that he would promptly pay said amounts to the State, and that in the judgment of the committee this agreement to repay should be considered in connection with the good faith of the Governor. That the said James E. Ferguson was guilty of a misapplication of the appropriation made by the Legislature for fuel, lights, ice, and incidentals, in that he used same in the purchase of groceries, feed, automobile tires, gasoline, etc., for his private use, and that his refusal to repay said funds constitutes a continued misapplication of the public funds of Texas.

Article 14. That by an express provision of the Constitution and his oath of office the Governor is bound to enforce all laws of the State of Texas. The laws of Texas during the period of his administration expressly forbade State banks to lend money in excess of 30 per cent of its capital stock. This was known to the Governor, yet in violation of this provision of the law he induced the officers of the Temple State Bank to lend to him, James E. Ferguson, an amount, far in excess of that authorized by law, which loans were made during the years 1916 and 1917.

Article 15. The people of this State have adopted an organic law, the Constitution of Texas, equally binding upon its highest officials and its humblest citizens. Article 7 of that Constitution provides for the maintenance and support of the University of Texas. That provision is a direction given by the people themselves in their most solemn manner to those who represent them in office as to their duties.

The Governor has vetoed or attempted to veto the entire appropriation for the University of Texas except the salary for one officer, thus in effect seeking to set aside that provision of the organic law requiring the support and maintenance of that institution, and to set aside the express will and judgment of the people of Texas. Though he had the legal power of veto, it was his sworn constitutional duty to again submit the question to the Legislature, which he has declared to the people of Texas that he would not do, and it was only

when a session had been called for his impeachment and it was apparent that a quorum of the House would attend to consider that question, and as a last extremity, he consented to call a session of the Legislature and submitted the question of appropriations for the University of Texas.

Article 16. Section 30a of Article 16 of the Constitution of Texas provides for a Board of Regents for the University of Texas, who shall hold office for six years, their terms expiring one-third every two years. The purpose of the people of Texas in the adoption of this provision was to take the University of Texas and all other such State institutions from the control of politics, and to keep the different boards from being under the control and domination of whomsoever might happen to be Governor. By Articles 2639 and 2640 of the Revised Civil Statutes of 1911 the Board of Regents are given the management of the affairs of the University of Texas with the discretion to remove members of the faculty when in their judgment it is deemed best. That it is the duty of the Governor, or any private citizen, to call attention of the Board of Regents to any mismanagement or improper practices at the University or any other State institution is readily conceded. The people themselves have given to the Board of Regents by constitutional enactment, which has been confirmed by statutory law, the sole right to judge of the truth of the charges and the punishment to be inflicted against members of the faculty. The Board of Regents in their sphere are just as supreme as the Governor is in his, each having both constitutional and statutory duties to perform, and each being answerable to the people of Texas. The Governor of Texas not only filed charges against certain members of the faculty, as he had a right to do, but after the members were exonerated by the Board of Regents he has sought to have the members of the faculty expelled from that institution because he desired it. He has thus sought to set aside the Constitution and law giving to the Board of Regents the discretion in matters of this kind and assert instead of their legal judgment his own autocratic will.

Article 17. Article 6027 of the Revised Civil Statutes of 1911 provides for the removal of members of the Board of Regents (among other



officials) for "good and sufficient cause." The Governor has sought to remove members of the Board of Regents without such cause, has demanded resignations of others without reason, simply and only because he could not dictate to them as to how they should cast their votes in reference to matters arising before them. Such conduct was a clear violation of the law, and would serve to make inoperative the provision of the Constitution providing for six-year terms of office.

Article 18. The Governor of Texas has in public speech and published writing declared to the people of Texas that the faculty of the University are grafters and corruptionists, that they are liars, and that they are disloyal to their government. These are most serious charges. He made them first before the Legislature convened in January, 1917. The members of the faculty, in justice to themselves, to the institution which they served, and to the people of Texas, whose money supported and maintained that institution, applied to the Senate of Texas for a full and fair investigation. They sought in every way possible that the people of Texas might know every fact and circumstance connected with the management of the University of Texas. James E. Ferguson opposed that investigation and on the urging of his friends in the Senate that the controversy was ended, and that the charges would not be repeated, there was adopted the Dayton resolution by the Senate of Texas, which was for the purpose of settling the controversy. After the Legislature had adjourned and when investigation was no longer possible by the representatives of the people, the Governor again repeated the charges, becoming more and more vehement. If he knew the charges to be true, it became his sworn duty to cause the parties involved to be prosecuted. If he did not know them to be true (and the Board of Regents after a fair hearing found that they were not true), he is guilty of criminal libel and slander against the fair name of Texas and one of its most cherished institutions.

Article 19. The Governor of Texas has sought to use the power of his office to control members of the Board of Regents. The chairman of the Board of Regents had become surety on a bail bond, the case pending in Jones County, Texas. The

defendant escaped and judgment was secured on said bond in the sum of \$5000 against the principal and sureties, one of the sureties being Wilbur P. Allen, chairman of the Board of Regents of the University of Texas. He applied to the Governor of Texas for the remission of the judgment, which he would have had to pay, and without good reason but only to influence his action as a member of the Board of Regents, James E. Ferguson as Governor remitted the forfeiture of \$5000, which, except for such action of James E. Ferguson, would have belonged to the people of Texas.

Article 20. That the said James E. Ferguson has sought to improperly influence the courts of Texas in matters in which he had a personal interest, first:

(a) After he had received from the Thirty-fifth Legislature at its Regular Session a bill passed by that Legislature for the increase of the salaries of certain judges, among others being those of the judges of the Supreme Court of Texas, he wrote them a letter calling their attention to certain provisions of the Constitution of Texas, and after they had ruled against him, vetoed the bill and gave as one of his reasons the fact that that court had allowed him no more than \$4,000 salary.

(b) That while the case of *Madrox vs. Dayton Lumber Company* was pending in the Court of Civil Appeals at Beaumont, and after a motion for rehearing had been overruled, and in a case in which the Governor was a party, and the decision of said court being against him and his associates, he wrote to one of the members of that court who had asked an endorsement by him, declining to endorse him, and bitterly criticising the decision of that court in that case, and mailed copies of the letter to the other members of that court. That within a few days thereafter his attorneys filed a second motion for rehearing.

Article 21. That during the session of the Thirty-fifth Legislature James E. Ferguson, as Governor of Texas, submitted to the Senate of Texas the nomination of C. W. Woodman for confirmation as Labor Commissioner. The Senate of Texas refused to confirm the nomination. That the Governor then submitted to the Senate



of Texas the name of Frank Swor, Deputy under C. W. Woodman, which nomination was confirmed by the Senate. But that he has failed and refused to qualify, and more than a reasonable time has elapsed since his appointment, but he has continued to act as deputy, and the said C. W. Woodman has continued to act as Commissioner. And knowing these facts Governor Ferguson has failed and refused to make an appointment, and C. W. Woodman, although confirmation was refused him by the Senate of Texas many months ago, continued to hold the office and draw the pay. That it was the duty of the Governor, when the Senate refused to confirm C. W. Woodman, to make another nomination, and in case the nominee refused to qualify, that it was his duty to make another appointment; but that he has failed and refused to do so in defiance of the Constitution of Texas and his oath of office.

In view of the premises the House of Representatives of the State of Texas does charge James E. Ferguson in the manner and by the means aforesaid, and that he did thereby render himself unworthy and no longer fit to exercise the duties incumbent upon the Governor of the State of Texas.

And the House of Representatives, saving to itself the liberty of presenting at any future date further articles of impeachment or other accusations against the said James E. Ferguson, and also of replying to his answer which he shall make under said articles, if he does so file an answer, and of offering proof to sustain each and all of the above articles and to each and all other articles or accusations which shall be required by them or which the case shall require, requests that the said James E. Ferguson be called on to answer the above Articles of Impeachment, and that in such proceedings the examinations, trials, and judgments thereof be had and given thereto as are agreeable to law and justice.

#### Certificate.

I hereby certify that the above and foregoing report of the Board of Managers appointed by the House of

Representatives, together with the accompanying articles of impeachment against James E. Ferguson, Governor of the State of Texas, were duly passed by the House of Representatives of the State of Texas by the following vote:

Ayes . . . . . 74  
Nayes . . . . . 45

This the 24th day of August, A. D. 1917.

BOB BARKER,  
Chief Clerk House of Representatives.

The Chair: Is it the desire of Counsel that the Secretary read the Answer of the Respondent?

Mr. Henry: Mr. President, we desire that the Answer be read now.

The Chair: The Secretary will read the answer of the Respondent, including the demurrers.

(Thereupon the Secretary read the Answer of the Respondent, James E. Ferguson, and the demurrer, which are as follows, to wit:)

#### Answer of Governor Ferguson.

Senate of the State of Texas, sitting as a Court of Impeachment for the trial of Honorable James E. Ferguson, Governor of Texas.

The answer of the said James E. Ferguson, Governor of the State of Texas to the articles of Impeachment exhibited against him by the House of Representatives of the State of Texas.

The respondent respectfully submits to the Senate of the State of Texas, sitting as a Court of Impeachment, that none of the acts alleged and charged against him in any of the twenty-one articles presented to the bar of the Senate constitutes either high crimes or misdemeanors in office, a violation of the oath of office of respondent, official misconduct of respondent or a violation on the part of respondent of the Constitution and laws of the State of Texas, and of this respondent prays the judgment of this Honorable Court as to the sufficiency of each of said allegations.

JAMES E. FERGUSON,  
Respondent.

R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,  
Attorneys for Respondent.

## I.

This respondent demurs to the Articles of Impeachment, herein presented to the Senate against him, and to each and every article thereof and says that they constitute no legal or sufficient presentation of impeachment against him for the reason that the same have been presented to the Senate by the House of Representatives at a special session of the Legislature, and that no allegation is made that the subject of impeachment was submitted to either branch of the Legislature by the Governor, and that the said House of Representatives possessed no legal right to consider the subject of impeachment of this respondent under the Constitution and laws of the State of Texas, unless and except such subject was submitted to the Legislature by the Governor in his call of such special session or thereafter by appropriate message to such Legislature; and this respondent says that there was no submission to the Legislature by the Governor of the State of Texas of the subject of impeachment of which failure this Honorable Court will take judicial cognizance, and of this respondent prays the judgment of this Honorable Court.

## II.

This respondent further specially demurs to Articles 1, 2, 12, and 13, because it appears from the face of such articles that the acts therein alleged and complained of are alleged to have been committed prior to November 7, 1916, and prior to January 16, 1917, the dates respectively of the election and qualification of this respondent to the office which he now holds; and that this respondent could not be impeached, legally, or under the provisions of the Constitution of the State of Texas for acts alleged to have been committed prior to his election and qualification to the office which he now holds; and no act alleged to have been committed prior to such election and qualification on the days and dates above mentioned can constitute high crimes and misdemeanors, a violation of this respondent's oath of office, official misconduct or a violation of the Constitution of the State of Texas, as applicable to the office which he now

holds and for which impeachment charges are here presented, and of this respondent prays the judgment of this Honorable Court.

## III.

This respondent further specially demurs to Articles 14, 15, 16 and 17 presented to this Honorable Court, and says the same do not constitute a high crime or misdemeanor, a violation of this respondent's oath, a violation of the Constitution of the State of Texas or official misconduct in that on the face of the allegations in said articles it was at most and only an exercise of official discretion vested in him by the Constitution of the State of Texas, and of this respondent prays the judgment of this Honorable Court.

## IV.

This respondent further specially demurs to Article 17, and says the same is insufficient and alleges no ground for impeachment, no violation of any official duty of this respondent, of the Constitution of the State of Texas, of his oath of office, in that the same at most alleges the doing of that which under the laws and Constitution of the State of Texas this respondent had a right to do; and such acts under the laws of the State of Texas not being subject to review, and there being no requirement to state the causes by which said removals, if any, were made could not be the basis of impeachment proceedings by the Legislature of the State of Texas or this Honorable Court, and of this respondent prays the judgment of this Honorable Court.

JAS. E. FERGUSON,

Respondent.

R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,

Attorneys for Respondent.

For answer herein this respondent denies all and singular the allegations and statements in each and all of the articles herein filed, except as hereinafter set forth and explained.

JAS. E. FERGUSON,

Respondent.

R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,

Attorneys for Respondent.

## I.

For answer to Article 1, this respondent says that on or about the 24th day of January, 1915, and on various days and dates thereafter, prior to November 7, 1916, and January 16, 1917, after this respondent had been duly inaugurated as Governor of the State, there was delivered to him by his predecessors in office a sum of money approximately \$101,600, which had been paid to said predecessor in office on certain policies of insurance on the building of the Canyon City Normal School, which had previously burned. That upon the receipt of said sum of money by this respondent he deposited the major portion thereof in the American National Bank at Austin, and the remainder, approximately \$45,000, in the Temple State Bank at Temple; said sum being deposited to an account designated as "Jas. E. Ferguson, Governor." That said money as needed for the rebuilding of said Normal School was remitted, under instructions, by the Temple State Bank to the American National Bank of Austin for the credit of said account of Jas. E. Ferguson as Governor. That said remittances and charges against said account from the said Temple State Bank were made by the then cashier thereof, C. A. Hughes, and under his personal supervision. That on the 23rd day of August, A. D. 1915, the said C. A. Hughes paid off a personal note made by this respondent to the First National Bank of Temple, Texas, in the sum of \$5000 and interest thereon, as well as interest on another note for like sum, amounting to \$600, or a total of \$5600. That without the knowledge, consent or approval of this respondent, the said C. A. Hughes, through mistake, charged the account of Jas. E. Ferguson, Governor, with said sum of \$5600, that this respondent had no notice or knowledge of said mistake and said erroneous charge until about the 21st day of July, 1917. That by reason of the many official duties with which this respondent was charged, the keeping of the books and showing the state of the Governor's account was entrusted to his assistant private secretary, and for the same reason he was unable to give personal attention to the details relating to said accounts; but that this respondent was mindful of the state of said account and the

disbursement of the funds therein. That as the construction of said Canyon City Normal building progressed he paid out on estimates furnished to him sums of money aggregating and equaling the full amount placed in said banks, to wit: the sum of \$101,607.18. That this respondent did not intermingle said Canyon City Normal fund with any funds and did not pay off any part of said building out of other funds, but did pay on said building the full sum, and every cent of the amount therein deposited, and that the same had been fully discharged and paid long prior to the filing of the charges herein and prior to November 7, 1916, and prior to January 16, 1917. That, as suggested in the concluding part of said Article 1, other funds came into the possession of this respondent as Governor and otherwise. That this respondent has always had said other funds on hand, and upon being suspended from the exercise of the duties of the office of Governor this respondent, as was his duty under the law, turned over to his successor in office all such other sums and amounts of money and that this respondent does not now hold and has not now in his possession any sum or amount belonging to the State of Texas. That there has never with the consent of this respondent been any part of the money of the State employed or used for him or his benefit. All of which this respondent most respectfully prays to be permitted to verify.

## II.

For answer to Article 2, this respondent says that on or about the 24th day of January, 1915, and after he was inaugurated as Governor of the State of Texas for the term running from January 1915, to January, 1917, and on various days and dates succeeding said January 24, 1915, this respondent had turned over to him by his predecessor in office, Governor O. B. Colquitt, the sum of \$101,607.18, which was realized from the insurance paid on the building of the Canyon City Normal School, which had theretofore been destroyed by fire.

That at the time the same was turned over to this respondent said building was being reconstructed and that it was necessary to turn over and pay for the construction of the same immediately upon estimates be-



ing furnished to this respondent by those having charge of said construction.

That in order for this respondent to promptly pay the same and avoid the delays in such construction which might ensue upon the failure to promptly pay upon the furnishing of such estimates, and in order that those having charge of such construction should receive the full amount of such estimates, this respondent deposited said sum of money in the American National Bank, the Temple State Bank, and the Heidenheimer State Bank.

That said amount of \$101,607.18 had been by this respondent's predecessor kept on deposit in various other banks in various portions of the State of Texas, but that it was not necessary prior to the time that this respondent had said sum of money turned over to him to have the same subject to immediate call and ready for immediate and prompt payment, because during the greater portion of said time there had been no contract let for the construction of said building, and no appropriation made by the Legislature covering said amount. That the contract for the construction of said building was only made on the 10th day of December, 1914, and the Legislature did not appropriate said sum for the construction of said building until a few days prior to the inauguration of this respondent as Governor, and that therefore this respondent's predecessor could safely put said sum out at interest for the reason that same was not subject to call or demand or use and could safely lend the same to parties desiring to borrow for a stated and definite period of time, and the same thereby became and was a desirable subject of loan and interest. That, as above stated, the contract for said building was let on the 10th day of December, 1914, and the Legislature just prior to the time or about the time this respondent was inaugurated Governor for his first term on January 19, 1916, appropriated said sum of money for the construction of said building and, therefore, this respondent could not safely put the same out for any length of time upon which any bank or individual would have paid interest, and it was his duty to have said funds at all times available and at his immediate command for the periodical payments that were contracted to be made upon

estimates furnished to him and this respondent after said funds had come into his possession in the manner aforesaid had no legal right or authority to put said funds out at interest. That because of the condition of said funds and the demands being made and made upon it, this respondent deemed it proper that he retain possession of said funds to be applied to the special purpose for which it had come into the hands of the Governor, to wit: the rebuilding of the said Canyon City Normal School. This respondent further shows to this Honorable Court that of the amount deposited in said Temple State Bank, to wit: the sum of about \$45,000.00, that much of the same was needed for immediate use in the construction of said building, that is to say, the sum of \$20,000.00 was paid out by this respondent on estimates furnished and made to him as Governor of the State of Texas and used and employed in rebuilding said building on dates after the receipt of the same and beginning on January 24, 1915, and days and dates subsequent thereto, up to July 10, 1915. That during the year 1915, various other sums, aggregating about \$6,156.00, were paid out of the funds in said Temple State Bank in the construction of said building and that various other sums were drawn out of the said Temple State Bank early in the year 1916. That had said sum of money been deposited in the Treasury of the State of Texas no interest would have been derived therefrom, and that as hereinbefore stated and declared, it was necessary, in the judgment of this respondent, to keep and have the same ready for immediate use, and the same was promptly paid out upon the presentation of estimates and demands of those having charge of the construction and erection of said building, and that the amount which was in said Temple State Bank was far less than that contained in the allegation in Article 2, and that said sum was not deposited in said Temple State Bank for the purpose of any personal profit or advantage to this respondent, but mainly for the reason to deposit said funds at such a place he knew that same would be at his command as Governor and available at any time, and to prevent any attempted discount of estimates which this respondent was informed was attempted to be made to the detriment and loss



of those constructing said building and entitled to the proceeds thereof, all of which this respondent prays to be permitted to verify.

### III.

For answer to Article 3, this respondent says that it is true this respondent agreed to take up two certain promissory notes, executed by his brother, A. F. Ferguson, and his Assistant Private Secretary, J. H. Davis, Jr., each for the sum of \$37,500.00, and that such facts were disclosed by this respondent while a witness before the House Investigating Committee on March 11 and 12, 1917, conducted by a committee of the House of Representatives. That prior to the giving of testimony, however, by this respondent before said committee, this respondent had arranged for the purchase and payment from said Temple State Bank of said notes by the Houston National Exchange Bank, of Houston, Texas. That this respondent call the president of the said Houston National Exchange Bank over the telephone, and that said president of said Houston National Exchange Bank agreed with this respondent to take up and pay off said notes, and to purchase the same. That at the time the Legislature was in session many duties, official and personal, were pressing upon this respondent and that said conversation was of necessity a hurried one. That in said conversation this respondent after having made the arrangement, above mentioned and referred to, with said president of said Houston National Exchange Bank said to him in substance that the president of the Temple State Bank would call him, the president of the Houston National Exchange Bank, up over the telephone and make the arrangements about the purchase and payment of said notes. That thereafter this respondent called up the president of the said Temple State Bank, to wit, T. H. Heard, and told him that he had arranged for the purchase and payment of said notes by said Houston National Exchange Bank, and requested that said Heard call up the president of said Houston National Exchange Bank. That this respondent had no knowledge of the details of the conversation and agreement of the Temple State Bank and the said Houston National Exchange Bank, but assumed and believed that his request had been carried out by

each and both of them. That no knowledge came to this respondent about said transaction between the presidents of said banks, respectively, until thereafter, about the 9th day of April, 1917, at which time this respondent learned that said notes had, without his previous knowledge or his consent in any way given or his approval, been returned to said Temple State Bank, whereupon this respondent immediately called up the president of said Temple State Bank and protested against such action and demanded that the arrangement which he had theretofore provided for with said Houston National Exchange Bank should be carried out and enforced, and protested against said notes being in the possession of said Temple State Bank. That the return of said notes was as hereinbefore stated entirely without this respondent's knowledge and without his consent, and this respondent is informed that upon his protest and disapproval being manifested to said Temple State Bank that said notes were returned to said Houston National Exchange Bank, where they were at the time of their payment by this respondent, subsequent to said 9th day of April, 1917. That the transfer of said notes by said Temple State Bank and the purchase and payment of the same by the said Houston National Exchange Bank and conduct and acts of this respondent throughout the entire transaction were and was a bona fide transaction in all things and in all respects. That this respondent believed that the request which he had made upon said Houston National Exchange Bank would be and was literally carried out, and when he testified before the Honorable Investigating Committee appointed by the House of Representatives, and which began its session on March 7, 1917, that he believed that said arrangement had been carried out and that Houston National Exchange Bank had at that time purchased said notes and paid for the same, and that said notes were then the property of the said Houston National Exchange Bank. That this respondent concealed and attempted to conceal nothing concerning the said transaction, but made exhibit to the minutest detail in so far as his knowledge of the same permitted and allowed of his most intimate personal and official transactions and particularly with reference to said items of indebtedness referred

to in said Article 3. As manifesting the good faith of this respondent, in pursuance of the contract originally made with the president of the Houston National Exchange Bank, in a very short time this respondent, after the return of said notes to the Houston National Exchange Bank, fully paid off and discharged same at said Houston National Exchange Bank, all of which this respondent here and now offers to verify.

#### IV.

For answer to Article 4, this respondent adopts his answer to Article 3 in so far as the same is applicable thereto, and in addition thereto says this respondent was impelled and moved in all things with reference to said transactions by the utmost good faith and earnestness of purpose to relieve the Temple State Bank of the criticism directed against it and the injury sought to be done it as a financial institution by those seeking its and this respondent's financial injury and destruction. That as hereinbefore alleged and stated, this respondent believed at the time he gave his testimony before the committee of the House of Representatives that the Houston National Exchange Bank was the owner of said notes, and that in truth and in fact said Houston National Exchange Bank had been the owner of said notes at said time and was the owner of said notes at the time they were paid off, and that this respondent is now informed and believes they were only returned to the Temple State Bank at the insistence of the President of same and which insistence occurred without the knowledge or consent of this respondent, and that said President of said Temple State Bank, as this respondent is now informed and believes, on his own motion, without consulting with this respondent, and moved and inspired by the knowledge that said notes were good and desired to collect the interest on the same made the arrangement which he did make for the return of said notes, but that same were returned to said Houston National Exchange Bank upon the demand made by this respondent as set out heretofore in his answer to Article 3. That nothing was farther from the mind of this respondent than to violate the law as charged

in article number 4 with reference to his testimony with reference to the carrying of said notes, with reference to the transfer of said notes to the Houston National Exchange Bank, or with reference to the said transaction in any way, manner or character, all of which this respondent is ready to verify.

#### V.

For answer to Article 5, this respondent says that he and the Bell-Bosque Stock Farm owed the Temple State Bank various sums of money, aggregating as it was represented to him an amount not in excess of \$150,000.00. That a proposition was submitted in writing to said Temple State Bank by this respondent to have executed and delivered to said Temple State Bank one note by A. F. Ferguson for \$37,500.00, to which was attached ample collateral to secure the payment of same; one note to be executed by J. H. Davis, Jr., for \$37,500.00, to which was also to be attached ample collateral to secure the same; one note by the Bell-Bosque Stock Farm for \$37,500.00, and one note by this respondent for the sum of \$37,500.00, which last note was paid in February, 1917. That before that time there has come into the possession of the Temple State Bank a note of this respondent for \$8500.00 and interest thereon. That said note had been executed by this respondent, but that at the time that said negotiations took place between this respondent and the said Temple State Bank with reference to the debts of this respondent due to said Temple State Bank it was understood that the total amount of same was a sum not exceeding \$150,000.00, as hereinbefore stated, and that when said notes were executed this respondent believed that said note of approximately \$8,500.00 and commonly known and designated as the Whitley Cotton Company note was embraced in said amount and sum of \$150,000.00, and that the execution of said four notes embraced said Whitley Cotton Company note, and that, therefore, the statement made by this respondent in his testimony before said House Investigating Committee, referred to in said Article 5, was honestly made under the belief that same had been

paid off and fully satisfied by the execution of said notes, and by the payment of the note of this respondent which had already at that time been accomplished and by the purchase and payment of said notes of the said A. F. Ferguson and said J. H. Davis, Jr., by the said Houston National Exchange Bank, as hereinbefore in other portions of this answer set forth and described. That the note above referred to as having been executed by the said Bell-Bosque Stock Farm for the sum of \$37,500.00 represented its own indebtedness to said Temple State Bank. That said Bell-Bosque Stock Farm was and is a corporation entirely solvent, able to meet its obligations and that said indebtedness and note in said sum of \$37,500.00 was executed by it and was in no sense the obligation or debt or note of this respondent, save and except the written guarantee which he executed and delivered to the Temple State Bank, and that he was, not liable upon that except and only in the event that failure to pay same should be made by the said Bell-Bosque Stock Farm, and that such contingency had not then occurred and has not now occurred and will not occur, for the reason and because of the solvency of said Bell-Bosque Stock Farm and its ability to pay said note when due. This respondent further shows to this Honorable Court that with reference to the note executed by A. F. Ferguson for the sum of \$37,500.00 that it was amply secured by collateral attached thereto, and this respondent would only become liable upon his guarantee delivered as aforesaid to said Temple State Bank in the event that said note was not paid and that the amount of it was not and could not be made out of the collateral thereto attached. That as to the note executed by the said J. H. Davis, Jr., it was likewise and also amply secured by the collateral thereto attached, and that this respondent would not become liable upon his guarantee delivered to said Temple State Bank as to this note unless and except it was not paid at maturity or that the collateral thereto attached did not prove sufficient for the payment of said note, to be paid out of the same.

That the cashier of said Temple

State Bank was at the time mentioned and complained of in Article 5, C. A. Hughes. That when said four notes, above mentioned, were executed that they extinguished all of the indebtedness of this respondent and the Bell-Bosque Stock Farm to Temple State Bank except as this respondent now learns said Whitley Cotton Company note, and leaving a balance to this respondent's credit of over \$3000. That by reason of said balance existing this respondent is informed and believes that said C. A. Hughes credited said Whitley Cotton Company note with the sum of \$3029. That this respondent did not know of the entry of said credit on said note by the said Hughes, and while no objection is alleged or made to the same, still this respondent had no knowledge at that time of the continued existence of said Whitley Cotton Company note, but thought that same was embraced in and the indebtedness created thereby was extinguished by the execution of the said four notes, above mentioned. That by reason of these facts that the statement made by this respondent before said House Investigating Committee on the occasion mentioned was made in good faith, and in the full belief that he did not owe the balance mentioned on said Whitley Cotton Company note. That he produced the books of said bank and at his request the officials of said bank appeared in the city of Austin and brought with them the said books for the inspection of said committee and the attorneys engaged by said committee. That no concealment was made by this respondent as to any of the facts as to any of such debts, and said statement was made by him in the absolute belief of its correctness in every detail and particular, all of which this respondent stands ready to verify.

#### VI.

For answer to Article 6 this respondent says that at the request of the Secretary of State of the State of Texas he took a check of \$60,000 to Temple, Texas, and deposited the same in the Temple State Bank, as stated in Article 6. That the fees and moneys collected by the Secretary of State other than franchise taxes are required by law to be deposited in the treasury of the State of Texas monthly. That those derived from franchise taxes are re-



quired to be deposited quarterly. That it is necessary to keep said funds between the dates of such deposit provided for by law in some bank. That in order to keep the same in some bank it is only required that the same be kept in some safe bank where upon the arrival of the time when deposits shall be made with the State Treasurer as required by law said funds shall be certainly available. That the Secretary of State before that time had opened an account with said Temple State Bank. That the act of this respondent in carrying said check to said Temple State Bank was simply as an accommodation to said Secretary of State. That if said funds had not been deposited in said Temple State Bank that it would have been required and necessary for them to have been deposited in some other bank and that in said Temple State Bank they were in an entirely safe place, where when the time came for such funds to be placed in the treasury of the State of Texas they were, and payment was made and settlement of every cent of said funds placed in said bank has been made at all times with said State of Texas, all of which this respondent stands ready to verify.

#### VII.

For answer to Article 7 this respondent says that he was requested by T. H. Heard, President of the Temple State Bank, to accompany him to the various banks in Austin and to introduce him to the officers thereof. That upon such request being made of this respondent he did accompany said Heard and introduced him to various officials of said banks, but that this respondent did not know of any arrangements, if any such existed, for the payment of interest on any sums of money deposited by said Heard with said banks. And while he knew that said Heard deposited said sum of \$250,000.00 represented by checks of the Secretary of State on the American National Bank of Austin, he supposed and believed at the time, and now believes that the said Secretary of State had the legal right to make said deposits with said Temple State Bank. And this respondent says that he did not have in mind, nor did he expect the said Temple State Bank to derive interest from any source on the deposit made by the

Secretary of State, all of which this respondent stands ready to verify.

#### VIII.

For answer to Article 8 this respondent says that upon a statement made to him by Honorable Curtis Hancock, Chairman of the State Highway Commission, that said Commission had in its possession a basket full of checks which it had not at that time had opportunity to collect, this respondent suggested to the Honorable Curtis Hancock that he was sure that the Temple State Bank would be glad to extend to the State Highway Commission its facilities for the collection and clearing of said checks, previous to the deposit thereof in the State Treasury, as required by law; and there was no intention or belief on the part of this respondent that any sum of money in the hands of the State Highway Commission would remain on deposit in said Temple State Bank, all of which this respondent stands ready to verify.

#### IX.

For answer to Article 9 this respondent denies that he has illegally deposited or permitted to be deposited any sums of money. That all of said acts complained of were legally done and performed. All of which this respondent stands ready to verify.

#### X.

For answer to Article 10, this respondent says that on or about the day and date mentioned in said article when there was pending before the Honorable House of Representatives a certain resolution, he did make an address concerning the matter set out and alleged in such resolution. That at that time the personal note of this respondent for \$37,500.00 had been fully paid off to said Temple State Bank. That the other portion of said indebtedness to said Temple State Bank, as this respondent then thought and believed, had been fully covered by certain notes executed by other persons and not by this respondent, each for the sum of \$37,500.00, and that any liability which might attach to this respondent on those notes had not accrued at that time, and that on the face of said notes they did not become due until December, 1917. That they were paid off long before such liability did occur with the ex-



ception of the Bell-Bosque Stock Farm note, which was its own obligation and in no sense the obligation of this respondent. All of which this respondent stands ready to verify.

#### XI.

For answer to Article 11 this respondent denies that he was guilty of any official misconduct with reference to the matters and things alleged in said Article No. 11, and that his refusal to answer certain questions propounded to him at such time and as alleged in said article was because he believed that he had the right and it was his duty to make such refusal under the Constitution of the State of Texas and the United States. That if he had answered said questions it would have had the effect of unnecessarily and unreasonably exposing his private affairs, private papers and private records to the curious scrutiny of those who were not in any way concerned in or related thereto, that an unlawful search and seizure of his private papers and property and a forfeiture of his property, from which he is and was protected by the Constitution and laws of the United States and of this State. That respondent in the matters alleged in said Article was not guilty of any disrespect of the House of Representatives or of the Legislature. All of which he stands ready to verify.

#### XII.

For answer to Article 12, this respondent says that he collected the sum of \$3,050.00 in the city of St. Louis, as a partial payment on sums due the State of Texas for goods belonging to the State of Texas and embezzled by the Quartermaster in the Adjutant General's Department of this State of this respondent's predecessor. That as hereinbefore stated, the books of the Governor's various accounts were kept by this respondent's Assistant Private Secretary. That as amounts became due on various funds they were promptly paid. That the amount, above mentioned, of \$3,050.00, was, by this respondent, reported to the Legislature of the State of Texas for an act or order of such Legislature to be made respecting its disposition. That notwithstanding the report of the same, as well as the report to such Legislature by this respondent of a fund turned over to him

known as the King's Highway Fund, and another fund turned over to him and known as the Galveston Storm Fund, no order or act was made or passed by such Legislature relating to the disposition of any of said three funds. That said funds have been at all times in the possession of this respondent, ready to be turned over on demand or when payment of same should be demanded, and that said sums continued in the possession of this respondent awaiting the further disposition of same by the Legislature until being suspended from the exercise of the duties of the office of Governor and the assumption of the duties of same by the Lieutenant Governor, pending the trial of these Articles, at which time this respondent turned over to Honorable W. P. Hobby, Acting Governor, all of said sum, and this respondent now holds the official receipt of the Acting Governor therefor. All of which this respondent stands ready to verify.

#### XIII.

For answer to Article 13 this respondent says that at the former investigation mentioned in said Article this respondent testified that, taking as a basis the suit of Middleton vs. Terrell, he would pay and discharge such amounts as it should be held and decided he was due and entitled to pay. That during the present investigation before the House of Representatives and while this respondent was testifying as a witness, he exhibited to the committee checks and deficiency warrants showing the payment by him of all deficiency warrants which had been presented to him, amounting to more than the sum of \$2,000.00, and that this respondent on said last mentioned occasion further testified that inasmuch as the Middleton vs. Terrell suit was a suit with reference to the payment of deficiency warrants and inasmuch as it had been practically impossible to determine just what items were permitted to be paid under said decision by reason of the temporary injunction having been dissolved by the trial judge, trying said cause in the District Court, and that it was not the understanding of this respondent that the demand was made or had been made for the payment of items embraced in appropriations enacted and passed by the Legislature of the State of Texas, authorizing and empower-

ing this respondent to expend certain items mentioned in said appropriation bill; but that if the House of Representatives would indicate its desire or wish for him to pay back and refund to the State such items as were and had been embraced in such appropriation bill and expended by authority of such bill that then and in that event respondent would pay over to the Treasurer all of such items and amounts. That the vote of the House of Representatives on that charge has been accepted by this respondent as an expression of the desire and wish of said House of Representatives to refund said amounts, although authorized to be expended by this respondent as aforesaid, by said Legislature, and should be refunded and paid back to the State, and therefore, this respondent did on Saturday, August 25, 1917, and within less than twenty-four hours after such expression by said House of Representatives pay into the Treasury of the State of Texas the full amount of said items, amounting to more than \$2,400.00. That this respondent believed and had a right to believe when the Legislature appropriated the sums for fuel, lights, ice and incidentals that he had a right to expend the fund as he has expended it, and it was so understood by the Legislature when the appropriation was made. All of which this respondent stands ready to verify.

## XIV.

For answer to Article 14, this respondent respectfully refers to his answer to Articles 3 and 4, and here adopts the same in so far as applicable hereto as his answer to this article. In addition thereto this respondent says that said sums were loaned to the Bell-Bosque Stock Farm and to this respondent for the purpose of buying cattle and to pay for feed and for the care and sustenance of same. And it was agreed at the time that at any time that the said Temple State Bank should need said funds so advanced that said cattle were to be sold and the proceeds applied to the repayment of said funds. That the loan of this money and the concurrent agreement to pay same was in the nature of the discount of bills against actually existing values, which is permitted by law. All of which this respondent stands ready to verify.

## XV.

For answer to Article 15, this respondent says that it is true that he vetoed the appropriation therein mentioned, but that he did so in the exercise of that discretion which is vested in him by the Constitution of this State. That he did not seek to set aside any provision of the Constitution, particularly that portion mentioned in said Article Number 15, or to set aside the express will and judgment of the people of Texas. All of which this respondent stands ready to verify.

## XVI.

For answer to Article 16, this respondent denies that he ever, at any time, sought to assert any autocratic will or power of his, and denies that he ever sought or attempted to do anything save and except that which he deemed and considered to be the best interest of the University of Texas and its conduct. That the position and duty of this respondent with reference to the management of the University has always been and is now that it should be managed and controlled by the Board of Regents, who by the Constitution of the State is vested with that power; and while he has at various times and places discussed with the Board of Regents, as he believed then and now believes he had a right to do and was his duty the matters of policy to be pursued in the management of the State University, that he has never gone further than that of earnest persuasion. All of which this respondent stands ready to verify.

## XVII.

For answer to Article 17 this respondent denies that he has sought to remove members of the Board of Regents without cause, that he has demanded the resignation of others without reason or that he has sought to dictate to them how they should cast their votes with reference to matters arising before them. For answer to said Article 17 this respondent adopts and here refers to his answer to Article 16, declaring that this respondent's sole purpose and motive was and is as has been expressed by him in his answer to Article 16. All of which this respondent stands ready to verify.

## XVIII.

For answer to Article 18 this respondent says that in investigating the affairs of the University of Texas, which was a duty imposed upon him by the Constitution of the State of Texas, he found that certain employes and members of the faculty of the University of Texas had used certain mileage books, paying therefor the sum of \$25 per thousand miles and charged the State of Texas the sum of \$30 for the same, thereby illegally obtaining from the State \$5 on every thousand miles traveled. That a certain member of the faculty, drawing a large annual salary from the State, and under contract to give to the State his entire time and talent was engaged, in charging people at other points in the State for services rendered which constituted a part of his duties as a professor of the University of Texas and as a member of the faculty of the same. That a certain other member of the faculty was as this respondent is informed engaged in the sale of books which the students were required to buy at exorbitant prices. That this respondent believed then and now that it was his duty to call these matters to the attention of the Board of Regents of the University and to the people of Texas. That this respondent in calling attention to such matters and other matters of mismanagement and misconduct to the Regents of the University of Texas and the people of Texas acquainted them with the facts as they had been conveyed to him and as he believed them to be true, but that this respondent never at any time accused the faculty of the University as a whole, but only those members who had been guilty as he believed of misconduct and of such conduct as unfitted them to be teachers of the youth of the State in its University. That instead of charging the entire membership in said faculty, as is indicated in said article, this respondent never made any complaint at any member of such faculty exceeding six, whereas there are instructors and professors to the number of about three hundred in said entire faculty. That as a matter of fact this respondent never filed any charges against any member of the faculty, but, though being requested, he declined to do so, and simply laid before the Board of Regents upon their unanimous request the infor-

mation which had been handed to him by the University authorities. All of which this respondent stands ready to verify.

## XIX.

For answer to Article 19, this respondent denies that he has sought to use the power of his office to control members of the Board of Regents, and denies that the remission of the forfeiture therein mentioned was in any way connected with any official or other act of the Chairman of the Board of Regents, but that the same was done in the exercise of a power vested in this respondent by the Constitution of this State, and in the belief that under all the facts and circumstances he was acting for the best interest of the State of Texas and its people. All of which this respondent stands ready to verify.

## XX.

For answer to Article 20 this respondent denies that he has ever in any way sought to improperly influence the courts of Texas in any manner whether he had a personal interest in such matters or not. All of which this respondent stands ready to verify.

## XXI.

For answer to Article 21 this respondent denies that he was in any way responsible for the failure or refusal of Frank Swor to qualify as Labor Commissioner after the refusal of the Senate of Texas to confirm the nomination of C. W. Woodman. That at the time that the Article 21 was adopted by the House of Representatives of the State of Texas, the said Frank Swor had already qualified as such Labor Commissioner. That this respondent thought at the time of his appointment of the said Frank Swor that he would at once qualify. That he has been informed that the delay incident to his qualification pertained to matters of policy under way in said Department, but that this respondent had no knowledge of the same and was not in any way responsible for same. All of which he stands ready to verify.

For further answer herein this re-



spondent respectfully shows unto this Honorable Court that all of the matters and things set forth in Article 14 were included and embodied in the charges preferred against this respondent in the Honorable House of Representatives in the month of March, 1917, and considered by a committee appointed by said House of Representatives, and which began its sessions on March 7, 1917, and continued until said session and hearing were concluded and report thereon made to the House of Representatives. That all of said charges so embraced in said Article 14 have heretofore been passed upon by the said House of Representatives and its findings recorded in the Journals and minutes thereof. That for that reason said charges should not and cannot be adjudicated and passed upon, having already been taken cognizance of by said branch of the Honorable Legislature of the State of Texas. All of which this respondent stands ready to verify.

For further answer herein this respondent says that with reference to each and every article preferred against him that they constitute no legal or sufficient grounds of impeachment against him for the reason that they have been presented to the Senate by the House of Representatives at a special session of the Legislature, and for the reason that the subject of impeachment has not been submitted to either branch of the Legislature by the Governor of the State and that the House of Representatives possesses no legal right to consider the subject of impeachment of this respondent under the Constitution and laws of the State of Texas and unless and except such subject has been submitted to the Legislature by the Governor in his call for such special session or thereafter by appropriate message to such Legislature. And this respondent further says that there was no submission to the Legislature by the Governor of this State of the subject of impeachment either at the time of the call of such special session or thereafter. All of which this respondent stands ready to verify.

For further answer this respondent says that all of the acts alleged in Articles 1, 2, 12 and 13 are alleged to have been committed prior to November 7, 1916, and prior to January 16, 1917. That such dates last above mentioned are the dates re-

spectively, of the election and qualification of this respondent to the office of Governor which he now holds, and this respondent cannot be impeached legally under the provisions of the Constitution of the State of Texas for acts alleged to have been committed prior to his election and qualification to such office which he now holds and no acts alleged to have been committed prior to such election and qualification on the dates and days above mentioned can constitute high crimes and misdemeanors, or a violation of this respondent's oath of office, or misconduct, or a violation of the Constitution of the State of Texas as applicable to the office which he now holds. All of which this respondent stands ready to verify.

Wherefore, This respondent says that he has in no way or manner whatever been guilty of high crimes and misdemeanors, official misconduct, a violation of his oath of office, or a violation of the Constitution of this State, or of any other acts rendering him subject or liable to impeachment by this Honorable Court.

And this respondent in submitting to this Honorable Court this, his answer to the Articles of Impeachment exhibited against him respectfully reserves leave to amend and add to the same from time to time as may become necessary and proper and as such necessity and propriety shall appear.

JAS. E. FERGUSON,  
Respondent.

R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,  
Attorneys for Respondent.

Senator Hopkins: Mr. President, I move that the Court stand at recess until 2:30 o'clock—2:00 o'clock.

Senator Clark: Mr. President, I think we had better get through with this and adjourn until tomorrow morning at 10:00 o'clock, on account of its being Labor Day.

The Chair: The Senator from Denton moves that the Court stand at recess until 2:00 o'clock this afternoon. Those in favor of the motion, let me know by saying "Aye"; those opposed, "No." (After the vote.) The Chair is in doubt. Those in favor of the motion, let me know by rising. The Secretary will count them. (After the count.) Four-



teen up. Those opposed to the motion, let me know by rising. (After the count.) There being fourteen Ayes and eleven Noes, the motion prevails, and the Court will stand at recess until two o'clock.

(The Court thereupon recessed until two o'clock p. m. of the same day.)

#### PROCEEDINGS.

Monday, September 3, 1917.  
Afternoon Session.

Pursuant to recess, the Senate, sitting as the High Court of Impeachment, reconvened at 2 o'clock p. m.

The Chair: The Court will come to order. The Secretary has finished the reading, gentlemen.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: Before counsel proceeds, I would like to get the sense of the Chair and the Senate with reference to copies of this testimony. I understand that in the House there were four copies made by the stenographers: one, the original, to be subsequently bound, one to be furnished to the Journal Clerk for the use of the Journal, and then a copy for counsel on each side to be delivered to the counsel the same evening of the day the testimony was taken—in other words, so that counsel would have the benefit of the testimony of the witnesses during the day in the proceedings the next morning. I just want to understand from the Chair whether it is the sense of the Chair that the same proceedings will be followed here.

The Chair: The Chair will state, if it is left to the Chair, that that will be the direction the Chair will give in reference to the matter. I should think that counsel would want, at the end of each day, copies of the testimony, and the Journal Clerk will have to have two copies, the original to be bound, and one for the Journal.

Senator Bee: Then the stenographers will be directed to issue four copies, making one original and three copies?

The Chair: Yes, sir.

Senator Bee: I understand that that is satisfactory to counsel on both sides.

The Chair: Gentlemen, we are ready to proceed.

General Crane: Mr. Sergeant-at-Arms, call Mr. H. F. Blum. Perhaps all the witnesses here had better be called in and sworn, as it will save time.

The Chair: I would like for the witnesses offered for both sides to be called in and let them be sworn. Is the rule invoked, General Crane?

General Crane: Yes, sir.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: I don't want to delay the proceedings, but I would like some action taken on the resolution introduced by me this morning. The witnesses are going to commence now, and counsel ought not to be required to strain their voices in the examination of the witnesses, but the Senators ought to hear the testimony; and as I said this morning, I am willing to entertain the suggestion that the desks be moved by the porters so we will be in position to hear.

The Sergeant-at-Arms: There are only four witnesses here now.

Senator Bee: The resolution provides that the Sergeant-at-Arms have the desks moved forward and as near counsel as convenient, to stay there until adjournment, and then move them back to their appropriate places.

Senator Caldwell: Senator, why can't we move down nearer?

Senator Bee: Well, I don't know. I want a rope or something put across here and let nobody inside but the Senators and counsel.

The Chair: If the Senator will yield to the Chair, if you will leave it to the Chair for this afternoon, we will have everything back of the desks cleared—we will use this part of the chamber occupied by the desks as the bar of the Senate and not allow anybody, not even the stenographers or pages, inside. We will have the chairs moved down here for this afternoon and let them remain that way until tomorrow.

Senator Bee: That is satisfactory. We are going to have a hearing here of great importance and if we are going to have a hearing in keeping with the dignity and importance of it, it ought to be conducted in such a way that the Senators can hear.

The Chair: Then, for this afternoon's session of the Court we want that portion of the Chamber occupied by the desks to be cleared of everybody, and not allow any stenographers or pages or visitors in there. We want the chairs moved down here so those on the outskirts may come down nearer the witnesses. We want to preserve order, and we do not want to have any conversations, especially any participated in by the Senators, and not have anybody inside the bar, except the members of the Court, the Managers for the House, the Respondent, and the counsel on both sides. Now, Mr. Sergeant-at-Arms, please have some chairs placed down here, and have all except the Senators retire from the bar of the Senate—I mean all except the members of the Court, the Respondent, the Managers for the House, and the Counsel. The reporters will be allowed to remain.

(Thereupon the seats for the members of the Court were arranged as directed by the Chair.)

The Chair: The witnesses will come forward, please, and give their names to the Secretary.

Thereupon the following witnesses appeared at the bar of the Senate: W. R. Long, J. H. Davis, Jr., H. F. Blum, Carl T. Widen, Curtis Hancock, DeWitt C. Dunn.

And said witnesses were thereupon sworn, as follows:

The Chair: You do solemnly swear that the testimony you shall give in the hearing of the impeachment charges against James E. Ferguson, Governor, shall be the truth, the whole truth, and nothing but the truth, so help you God. Now, Gentlemen, you are placed under the rule. You understand what that is. You will retire where you cannot hear what any other witness testifies and you will not talk to anyone about this case nor permit anyone to talk to you, except counsel.

Thereupon the Board of Managers called

H. F. BLUM,

who, having been previously sworn and placed under the rule, testified as follows:

Direct examination  
By General Crane.

Q. Your name is H. F. Blum?

A. It is, yes, sir.

Q. You are assistant cashier of the Temple State Bank?

A. Yes, sir.

Q. Of Temple, Texas. How long have you occupied that position?

A. About two and a half years.

Q. You were, then, assistant cashier in 1915, in January?

A. February, 1915, I believe it was, yes, sir.

Q. You have the records of the Bank with you, beginning January 1, 1915, as called for by your subpoena?

A. I have, yes, sir.

Q. Now, will you be good enough to get your record and take the first entry on the account on your book of James E. Ferguson, Governor, and give the date and amount of each item on until it is closed? Take first the items of deposits, if you please.

A. On January 21, 1915, this account was opened by a deposit of \$5081.11. On February 3, 1915, a deposit of \$2500. February 5, deposit of \$10,000. February 13, deposit of \$10,000. February 16, deposit of \$10,000. April 14, \$2500. May 1, \$2500. May 20, \$2500. June 10, \$607.07. June 12, check for \$5000.

Q. Well, is that a deposit?

A. A check.

Q. That is a check against it?

A. It is, yes, sir.

Q. Well, first we want to get the amount of deposits.

A. August 3, \$3000.00. August 5, \$2000.00. December 21, 1915, \$1297.50.

Q. Is that \$1297.50 December 12, 1915?

A. December 21, 1915.

Q. December 21, 1915, is the last deposit in the Governor's account in the Temple State Bank?

A. It is, yes, sir.

Q. Now, have you the total amount of the deposits made in the bank?

A. I have the daily balances.

Q. No, I want the total amount of the deposits.

A. No, I haven't.

Q. Can you foot them up there in a moment or two?—there are not many items, are there? Suppose you put them on the back of that Journal there with a pencil. All right, that paper is better.

(Witness adds up the amounts.)

A. During the time this account was in the bank, \$51,985.00.

Q. Do your books show the fund

belonging to the State from which that was taken there?

A. It does not, no, sir.

Q. It just simply shows an account in favor of the Governor as Governor for \$51,800.00?

A. It shows at different times how much has been deposited.

Q. In the bank?

A. Yes, sir.

Q. Beginning the 21st of January, 1915, and ending December 21, 1915?

A. That is correct.

Q. Now, will you get the amount of checks against that fund?

A. All right. On June 12, 1915, was a check for \$5,000.00.

Q. Be good enough to make an estimate of that. Have you got the amounts of the checks there?

A. I can get them.

Q. Well, make a statement so you can give us the footings also.

A. July 8th, \$10,000; August 10th, \$5000; August 23rd, \$5600; January 12th, 1916, \$6156; February 3rd, \$6000; March 7th, \$3000; April 13th, \$9932.18.

Q. Now, will you give us the amount of those checks, please?

A. They add up \$50,590.50.

Q. \$50,590.50, leaving a balance in the account, now, of how much?

A. \$1297.50.

Q. \$1297.50 in the Temple bank at this time?

A. That is correct, yes, sir.

Q. Belonging to the Governor's account?

A. Yes, sir, that is correct.

Q. J. E. Ferguson, Governor. Assuming that that is State funds, then, you have had that money since when—when was that last deposit?

A. The last deposit was on December 21, 1915.

Q. December 21, 1915—nearly two years. Now, will you give us—be good enough to give us the amount of daily balances in that account during that period—the amount of daily balance, I will say, until that big check was drawn, ninety-nine hundred and some odd dollars.

A. On January 21, 1915, it began with \$5081.11. February 3rd there was a balance of \$7581.11. On February 16th there was a balance of \$37,581.11. May 1st, \$42,581.11. June 10th, \$45,688.18. July 8th, \$30,688.18. August 10th, \$30,688.18. December 21, \$26,385.68. February 3rd, \$14,229.68, and April 13th, \$1297.50.

Q. Those are the daily balances?

A. Yes, sir.

Q. Now, going back over those checks, do you know the items for which any of those checks were given?

A. I do not, no, sir.

Q. You know the item for which one of those debit accounts was given, do you not—was made?

A. I do not know, no, sir.

Q. Do you not know about that fifty-six hundred dollar item, what that was made for?

A. I heard it discussed around here, but I don't know it to be a fact, no sir.

Senator Bee: Mr. Blum, speak a little louder.

Senator Bailey: Mr. President, ask the witness to speak a little louder. We can't hear him over here.

The Witness: All right.

The Chair: The request is made that the witness speak louder. I want to say for the information of the Sergeant-at-Arms, that when the Chair was permitted to make this arrangement for this afternoon, this portion of the Chamber was restricted to the members and officers of the Court and the Board of Managers of the House, the Respondent and the Counsel. That is a temporary rule, but I want everybody to understand that while you may be admitted to the floor of the Senate, nobody except those named will be permitted within the bar of the Senate.

Q. Haven't you a memorandum showing to whom that fifty-six hundred dollars was paid?

A. No, sir.

Q. Did you not have that in your testimony in the House?

A. I did not, no, sir.

Q. Showing the account on which that fifty-six hundred was paid?

A. It was paid on the account of James E. Ferguson, Governor.

Q. It was charged to the account of James E. Ferguson, Governor?

A. Yes, sir.

Q. But haven't you a memorandum or something in the bank indicating to whom that money was paid and what it was for?

A. We have not, no, sir.

Q. Do you mean to say you have never had?

A. We did have, but whatever it was was returned in a statement two years ago.

Q. Returned to the Governor in the statement?

A. I don't know who it was returned to.

Senator Bee: We can't hear you, Mr. Blum.

Q. Well, to whom would you return it, Mr. Blum—you say it was returned; to whom was it returned; to a stranger, or to Governor Ferguson?

A. Evidently it was returned to James E. Ferguson, Governor.

Q. Very good. Now, that statement, you say, was returned to him two years ago?

A. No, I don't know how long ago.

Q. Well, what does your book show?

A. It shows the balance on March 7, 1916.

Q. March 7, 1916. Well, now, when you balance a man's book, a customer's book, you always send the credit items and checks and charge items back?

A. Well, ordinarily, yes, sir.

Q. Well, don't you always do it—isn't that the unbroken rule in banking circles?

A. No, sir, some banks hold their checks.

Q. Does the Temple Bank hold the checks of their customers?

A. No, sir, we don't.

Q. Your custom and your rule, then, at that time was to send checks and charge items back to the customer with his book?

A. That is correct, yes, sir.

Q. Well, now, you were in the bank there. Don't you have a personal recollection of what that fifty-six hundred dollars was for?

A. No, sir, General. Handling about a thousand checks a day, it would be impossible to remember back two years ago a certain check.

Q. Well, haven't you since this controversy arose inspected the items and refreshed your memory to get what constituted that particular item?

A. There was no way to refresh my recollection.

Q. I am not asking you that. Just answer the question, please. Haven't you inspected the items, that fifty-six hundred original charge, the item itself?

A. I have not seen it, no, sir.

Q. And there is nothing on your books to indicate that?

A. Nothing, no, sir.

Q. Nothing on your books to indicate what item was paid out of that—any item that was paid out of it?

A. No, sir, nothing more than the amount.

Q. The persons to whom payable are not given there?

A. No, sir.

Q. Now, after this fifty-six hundred dollars was paid out there was no item of cash deposited after that, was there, except one of something over twelve hundred dollars?

A. That is correct, yes, sir.

Q. The Governor's account after the payment of that fifty-six hundred dollars was credited a deposit some time after that. What is the date of that?

A. December 21, 1915, \$1297.50.

Q. How is that?

A. December 21, 1915, \$1297.50.

Q. What is the daily average balance of that account during that period?

A. I ran it up for you last time, General, but I have forgotten.

Q. You haven't got it now?

A. No, sir.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: I dislike very much to interrupt, but back here it is very hard to hear the witness.

General Crane: I would be obliged to you, Senators, if you would get nearer because it is difficult to examine the witness and have you who are farther away hear me.

The Chair: We will have more seats placed here. Proceed, General.

Q. Now, Mr. Blum, do you mean to say that your bank is in such a condition that when a fifty-six hundred-dollar item is charged against the account of one of your customers you are perfectly helpless after the books are balanced and the checks returned to the customer, to show what that fifty-six hundred was paid for?

A. Ordinarily, that is the custom of any bank, yes, sir.

Q. You keep nothing to indicate it?

A. No, sir, and no bank that I know of does, General.



Q. You don't keep a check record, then?

A. No, sir, we don't.

Q. Of items that are charged—that is, charge items?

A. No, sir, we don't.

Q. Now, have you the Governor's personal account there covering that same period?

A. I have, yes, sir. (Witness produces account referred to.)

Q. All right. Beginning on January 1, 1915?

A. All right, sir.

Q. Well, just give the line of—

A. (Interrupting). Of deposits?

Q. Of the deposits.

A. The first deposit after January 1, 1915, was on January 4, \$2.70; on January 7, \$460; January 8, \$2,500—

Q. (Interrupting). Well, perhaps we won't go into all that now, but the daily balances will perhaps answer our purposes here.

A. January 4, \$1,217.33; January 7, \$1,185.58; January 10, \$2,011.51; January 14, \$868.76; January 15, \$225.85; January 21, \$3,802.51 overdrawn; January 30, \$3,433.56 overdrawn; February 10, credit balance of \$13,147.47.

Q. Intervening were those overdrafts?

A. Yes, sir.

Q. Well, read the overdrafts.

A. February 5, \$4,563.91; February 6, \$4,632.70; February 9, \$4,674.76; February 10, credit balance of \$13,147.44; February 15, \$1,885.77 credit balance; February 23, \$1,508.79; March 1, \$5,050.48; March 3, \$5,523.54; March 5, \$5,430.24; March 9, \$5,964.51; March 11, \$4,670.43; March—

Q. (Interrupting). Are you reading each one?

A. Very nearly—skipping one or two days.

Q. Well, go ahead.

A. March 13, \$4,345.47; March 20, overdraft of \$8,278.06; March 23, overdraft, \$8,451.91; March 26, \$15,594.31 credit balance; April 1, \$14,430.43; April 3, \$13,520.79.

Q. Let me see. Are you reading those overdrafts?

A. Yes, sir. April 5th, \$12,066.64; April 8th, \$10,906.01; April 12th, \$780.42; April 19th, \$655.84.

Q. Perhaps—let me see those sheets, and I can help you—the

sheets of the overdrafts. Let me see that.

A. It is about the middle of the page.

Q. Well, did you read under date of March 11th the overdraft of \$8041.35?

A. I read them just as they came, General.

Q. And then \$8178.06 on the next day, and \$8,225—have you those in duplicate?

A. No, sir.

Q. And then \$8,275.06 on the next day, then a credit balance of \$4,436.72 the next day, and \$4,345.47, and then on the next day, or rather on the same day, the 13th, was an overdraft of \$8,275.06, which continued \$8,278.06 overdraft on the next day, \$8,255.16, and another day \$8,451.91. Are you sure you read all those into the record?

A. I don't know, General; I read about every other day there.

Q. Yes. Well, go ahead over there until you reach the account—any part of his daily balances that you want to read also, and when you get to the overdrafts, read it all.

A. May 1st, \$1,477.56; May 4th—

Mr. Hanger: 1915, is that, Mr. Blum?

A. This is 1915, yes, sir. May 5th, \$2.09; May 13th, \$3,285.50; May 15th, \$3,432.60; May 18th, \$3,417.35; May 26th, \$3,056.70; June 1st, \$11,498.72; June 5th, \$11,134.19.

Mr. Hanger: What is that?

A. Credit balance. June 8th, \$10,693.72; June 11th, \$10,523.22.

Q. Let's see that, the one you just read.

(Witness exhibits paper to Counsel.)

A. June 12th, \$9903.05; June 15th, \$18,507.15; June 18th, \$1445.06; June 28th, \$231.81; July 1st, \$47.31; July 6th, \$2033.51; July 8th, \$1024.85; July 12th, \$645.82; July 16th, \$503.66; July 20th, \$103.60; July 23rd, \$76.62; August 1st, \$57.97; August 4th, \$14.97; September 1st,—

Q. (Interrupting) Now, August 23rd, what is that—1915—what was his daily balance?

A. On August 23rd there was \$50.62; September 1st, \$383.99; September 7th, \$228.44; September 14th, \$165.74; September 20th, \$2.99; October 6th, \$261.50; December 31st, \$5421.30; January 4th,

\$5881.30; January 7th, \$8581.30. Now, the account goes in the "red."

Q. All right. Now, read the "red" just as it occurs there.

Mr. Hanger: Beginning what date?

A. January 10, 1916, \$14,040.82; January 12th, \$12,659.54; 13th, \$13,352.39; 14th, \$22,632.69; 15th, \$44,799.03; 24th, \$44,774.03; 25th, \$44,014.03; 26th, \$35,416.78; February 3rd, \$11,416.78; February 4th, \$11,041.15; February 14th, \$10,724.56; February 16th, \$7379.56; February 21st, \$7554.61; 25th, \$10,554.61; 29th, \$15,374.90; Mar. 1st, \$16,973.72; March 8th, \$21,833.72; March 27th, \$17,103.37; March 28th, \$17,863.01; March 31st, \$21,111.08; April 11th, \$11,442.30; April 12th, \$32,756.51; April 26th, \$32,824.61; April 28th, \$33,515.61; May 8th, credit balance of \$1231.76.

Q. Let me take the sheet you just finished, please—well, go on with the next.

A. May 16th, credit balance \$2299.98; May 23rd, \$2072.92.

Senator Bee: What year.

A. 1916. June 1st, overdraft of \$31,109.36; June 6th, \$31,165.55; June 20th, \$30,974.65; July 1st, \$30,641.32; September 2nd, \$30,557.25; September 13th, \$30,442.21; September 18th, \$30,422.96; September 19th, \$30,401.31; September 23rd, \$29,303.17; September 26th, \$31,470.20; October 2nd, \$31,409.47; October 3rd, \$31,083.55; October 14th, \$29,720.74; October 21st, \$36,692.23; October 31st, \$37,422.23; November 3rd, \$37,322.96; November 8th, \$22,729.86; November 11th, \$24,442.56; November 15th, \$28,981.21; November 17th, \$8918.88; November 18th, \$9410.79; November 22nd, \$10,113.58; November 28th, \$24,772.73; November 29th, \$27,248.73; December 2nd, \$26,067.35; December 7th, \$24,487.08; December 9th, credit balance of \$73.39.

Q. All right. Now, let me have that page, please. December what day did you say was that credit balance?

A. Down at the bottom, about the third from the bottom.

Q. Do you mean these items with asterisks or the stars are credit balances?

A. Yes, sir.

Q. Now, Mr. Blum, from June 28th—no, I'll take that back; from

January 22nd—January 10, 1916, until December 9, 1916, Governor Ferguson's personal account was largely overdrawn at the Temple State Bank, wasn't it? There is the beginning?

A. From January 10th.

Q. Yes. Speak a little louder.

A. January 10, 1916, the overdraft started and continued to April 28th.

Q. Well, then, this continued until April 28th of the same year?

A. Yes, sir.

Q. Well, but this continues, doesn't it?

A. No, sir; then there was a credit balance for a while.

Q. Well, when does the credit balance begin—I want that, and want the overdrafts now.

A. That was what I was reading exactly.

Q. Well, before you get on the next page let me get your statement here. What is that item in red up there in the middle of the page—does it mean anything?

A. No, sir, it does not.

Q. Well, what does that mean?

A. I don't know—that is some of the bookkeeper's mark, I suspect.

Q. Well, now, let's understand this: the overdrafts began January 10, 1916, began with \$14,040.82?

A. Yes, sir.

Q. It then ran up as high as \$44,799, isn't that so?

A. Yes, sir, for nine days.

Q. For how long?

A. Nine days, from the 15th to the 24th.

Q. Well, the 25th, it was \$44,014.03?

A. Yes, sir.

Q. And on the 26th it was \$35,416?

A. Yes, sir.

Q. Then it was reduced on the next—on February 3rd to \$11,416.78. Well, now, didn't that overdraft of \$35,416.78 continue until it was reduced to that?

A. From the 15th to the 26th.

Q. Twenty-sixth of February, wasn't it—isn't that the last one in February?

A. No, sir, in January.

Q. Twenty-sixth of January?

A. Yes, sir; the \$35,416.78 is January 26th.

Q. Yes, you are right about that, but February 3rd, though, is the

item—what I am trying to get at is what does your book mean when it refers to that sum?

A. On February 3rd?

Q. Well, then, did it stand at \$35,416.78 until February 3rd?

A. Until February 3rd?

Q. That is exactly what I asked you, if it didn't stand there until February 3rd?

Mr. Hanger: What year?

General Crane: 1916.

Q. Then it continued next—February 14th it was \$10,724.56, then on February 16th it was reduced to \$7379.56. Now, where is it continued?

A. On the back.

Q. Now, February 21st it remained at \$7554.61; on February 25th it went up to \$10,554.61, didn't it?

A. Yes, sir.

Q. February 29th it went back up to \$15,374.90; March 1st, \$16,973.72; March 8th, \$21,833.72; March 27th, \$17,103.37; March 28th, \$17,863.01; March 31st, \$21,111.08. Now, it indicates that a statement was rendered on that particular date on that account, doesn't it?

A. Yes, sir, it does.

Q. Rendered, of course, to Governor Ferguson. Now, on April 11th the overdraft was \$11,442.

A. (Interrupting) \$14,442.

Q. No, you are mistaken, that is \$11,442, isn't it?—yes, to be sure.

A. Yes, eleven thousand.

Q. Now, then, again on April 12th there was an overdraft of \$32,756.51, wasn't there?

A. Yes, sir.

Q. That book indicates that you sent the Governor another statement on that day, doesn't it?

A. It does, yes, sir.

Q. You had sent him a statement on March 11th, and on April 26th you sent him a second statement—no, beg pardon, I skipped a space there; you sent the first on March 31st?

A. Yes, sir.

Q. You sent the second statement on April 12th?

A. Yes, sir.

Q. Showing an overdraft of \$32,756.51, and on April 25th you sent him another statement showing on overdraft of \$32,824.61?

A. Those statements were sent to the Governor's Secretary.

Q. Well, you mailed them to the Governor, didn't you, or did you mail them to the Secretary?

A. They were always addressed to the Assistant Secretary, yes, sir.

Q. Well, now, why did you state that—is that a fact within your own knowledge?

A. It is, yes, sir.

Q. Did you send them out, or did the bookkeeper?

A. The bookkeeper did, but lots of times I would help him.

Q. Well, does the book show that the statement was sent to the man who had the account?

A. It shows the statement was rendered.

Q. Rendered to the party who had the account?

A. Well, it does not show on there to whom it was sent but—

Q. (Interrupting.) Well, now, Mr. Blum, you are a banker; let's not fence about this. Don't you know it means that it was sent to the man who had the account there?

A. It does, yes, sir.

Q. Now, on April 28th, there was an overdraft of \$33,515.61. Now, do you know how that was covered, whether covered by cash or by note?

A. I could not say; I don't know.

Q. You don't know about that?

A. No, sir.

Q. Now, this is May—where do you begin there?

A. About May 13.

Q. Now, let me glance at that, please, I may not want to take time to read all parts of it into the record,—yes, we will read this entire page into the record beginning on May,—does that go back to November? You see we quit in May. How is that?

A. That is May, that is where we stopped on the other page.

Q. All right. Now let me see—this record says then that he had a balance there in the bank to his credit of varying amounts from \$1231—

A. (Interrupting.) On the other side, General.

Q. For how much?

A. \$12,317 on May 10, to \$2072.92.

Q. The overdrafts, when did they begin?

A. On June 1, 1916.

Q. On June 1—I mean between

that he had seemed to have some larger balances, didn't he?

A. All overdrafts.

Q. Beginning where? Now on June 1, he had an overdraft of \$31,109.36, didn't he?

A. He did, yes, sir.

Q. It continued, \$31,165 and on down to and including September 19, it was \$30,401.31, wasn't it?

A. All right, yes, sir.

Q. September then, began with \$29,303—September 23d; the 26th it was \$31,470.20; September 29th, \$31,428.65; the amount was again balanced, wasn't it, that is when statements were rendered him?

A. Yes, sir.

Q. Another statement had been rendered him on January 6th, hadn't it?

A. Correct.

Q. October 2, \$31,409.31; October 3, \$31,838.

A. \$31,083.55.

Q. October 13, \$31,061.33; October 14, \$29,720.74. Now on October 14, his overdraft was \$36,410.74, wasn't it?

A. Correct, yes, sir.

Q. October 21, \$36,692.23; October 31, \$37,422.23.

A. Correct, yes, sir.

Q. November 3, \$37,322.96; November 8, \$22,729.86; November 11, \$24,442.56; November 14, \$25,720.59; November 18, \$28,981.21; November 16, \$18,918.88. Now that was gradually reduced, it was reduced to \$8900 and then \$9410.79, and again at \$10,000 on November 21; \$10,113.58 on November 22; November 24, \$23,450.13; November 26, \$24,772.73; November 29, \$27,248.73. There was another statement rendered him at that time, wasn't there?

A. There was, yes, sir.

Q. December 2, \$26,067.35; December 4, \$24,328.61; the next at \$24,487.08. It was then reduced gradually until on the 13th of December it had reached \$59.64, wasn't it?

A. No, sir, on December 9 there was a credit balance of \$73.39.

Q. That's right, yes, on December 9 there was a credit balance of \$73.39. It was reduced December 13 to \$59.64?

A. That is correct.

Q. So that from June 1, 1916, until December 7, there was a vary-

ing amount of overdraft to his personal account, the highest point being thirty-seven, and thirty-one thousand, and thirty thousand and twenty-nine thousand and thirty-one thousand until it reached the point of twenty-four thousand December 7, wasn't it?

A. That is correct.

Senator Hanger: When did you say it began?

A. In June.

General Crane: June 1, there was only a little period in which he had a balance.

Senator Hanger: Yes, on the 16th.

Q. Now is that all?

A. No, sir.

Q. All right. Now, the next—now let's see when that broke up.

A. December 15th.

Q. Let's see if I can help you, I read a little louder than you do. December when?

A. December 15th.

Q. Now, on December 15th of the same year they began with a small credit balance of \$59.64, running down to February 1, no,—no, January 15,—February 1, varying amounts from \$40, to \$91, \$86, \$84, and then on March 31 a credit balance of \$3,758.90. That varies then between thirty-seven hundred,—the low point \$23.26 on April 26, and then again \$37,326.90; \$37,317.10.

Senator Hanger: What date?

General Crane: April 26. These are the credit balances. April 27, \$35, and it runs on down until it begins to reduce on May 15 there is a balance of \$8,230.53.

A. Correct.

Q. There are balances then varying from six and seven and eight thousand dollars, until January 23, 1917,—is that right?

A. Correct, June 23, 1917.

Q. June 23, 1916, isn't it?

A. 1917.

Q. Does this take it up to 1917?

A. Yes, sir, June 25.

Q. Give us first,—that is about as far as we want to go just now,—showing a credit balance of six thousand two hundred and four dollars and twenty-nine cents. Now, we will turn to the Governor's note record covering that same period that carried these overdrafts, how much did the bank have his personal notes for, and personal guarantee, for instance,



take this period of overdrafts beginning January 10, isn't it, 1915, or 1916,—1916, I guess?

A. 1916, yes, sir.

Q. Yes, suppose you get the note record now and let us see from January 1, 1915, how many notes he had in the bank covering this same period.

A. Ask that question again, General.

Q. I want to know what notes Governor Ferguson had in the bank at one time, taking them all along, the renewals and all, beginning January 1, 1915, we will just trace them on out, I think you testified before he owed the bank about twelve thousand dollars in notes when he was inaugurated Governor.

A. I don't remember that. It is pretty hard to do, there is no way telling just exactly what he owed at one time, because it is scattered through these books.

Q. Do you mean to say you cannot get a list of the notes he owed?

A. We can do it in two or three days' time.

Q. We want them and the sooner you get them then the quicker we will finish with them, Mr. Blum. Do you mean to say you cannot take your note record and go through it in a short time?

A. In about two days' time. We will have to read every note in these books.

Q. The subpoena duces tecum commanded you to bring a list of the notes.

A. I have got a list there,—in here it is, just to find them.

Q. Yes, but we want a list that is available. We can postpone that and you can do that some time between now and court hour tomorrow morning.

A. I can get some of them, I will get all I can.

Q. Well, we will postpone that and pass to another: Turn to the Secretary of State's account and let us see when he began to do business with the Temple State Bank, will you?

A. June 11, 1915.

Q. June 11, 1915, the Secretary of State began to do business with you?

A. All right, opened an account with a deposit of \$5,000.

Q. Opened an account with a de-

posit of \$5,000? Now what is the next deposit? We want to get a list of deposits first?

A. April 22, \$7,887.50.

Senator Hanger: April 22, 1915?

A. Yes, sir, 1916.

Senator Hanger: What was the first item?

A. The first one was on June 11, 1915, of \$5,000; then April 22, 1916, two deposits, one for \$7,887.50 and another for \$5,088.29.

Q. All right.

A. April 24, \$8,162.50; April 25, \$15,497.65; April 26, \$13,805.75; April 27, \$10,978.95; April 28, \$13,300; April 29, \$6,735.75; May 1, \$3,964.25; May 3, \$2,264.25; May 4th, \$1,022; May 16th, a check then for \$85,420.64.

Q. I didn't ask you for checks, I want to get a list of the deposits first.

A. All right, May 17th, \$20,000; June 6th, \$1,051.10.

Q. Did you pass over May 29th?

A. This is 1916 now, General.

Q. I see, I see.

A. (Continuing). June 6th, \$1,051.10; June 7th, \$266.25 and \$659.37; June 9th, \$520.73; June 12th, \$523.15; June 14th, \$435.32; June 16th, \$467.75 and \$314.40; June 17th, \$506.55; June 19th, \$216.25; June 21, \$646.15; June 22, \$504.40; June 23d, \$384.50; June 26th, \$578.50 and \$514.65; June 27th, \$369.30; June 29th, \$987.92; July 1st, \$772.25 and \$545.35; July 3d, \$1,321.45; July 5th, \$728.75; July 6th, \$517.50; February 7th, \$60,000; March 3d, \$50,000; April 19th—

Q. Wait a minute, February, what date is that?

A. February 7th, 1917.

Q. \$60,000?

A. \$60,000.

Q. Then March 3d?

A. 1917, \$50,000; April 19th, \$7,312; April 28, \$11,142.75.

Q. Call this last one?

A. March 3d, \$50,000; April 19th, \$7,312; April 28, \$11,142.75; April 30, \$6,087.50; May 1st, \$10,314; May 2d, \$5,422.95; May 3d, \$1,774; May 4th, \$4,098.50; May 19th, \$3,690; May 25th, \$50,000; May 29th, \$250,000; July 13th, \$10,000.

Q. That ends the account?

A. That ends the account.

Q. Wait just a minute, now. Have you totaled them?

A. No, sir.  
Q. Well, we can do that a little bit later. Now, how often were checks drawn on that account? Turn back to your checks, will you?

A. All right, May 15th—

Q. That is the first check, now—the account was opened when?

A. The account was opened on—

Senator Hanger: That is the Secretary of State's account?

A. The Secretary of State's account was opened June 11, 1915. From then until April 22, 1916, there was a \$5,000 balance.

Q. Well, when was the first check drawn?

A. On May 16th.

Q. What year?

A. 1916.

Q. Then, that \$5,000 remained in there from June 1st?

A. June 11th.

Q. June 11, 1915, until May, 1916,—is that correct?

A. That is correct.

Q. That was the first check drawn?

A. It was.

Q. Now, when was the next check drawn?

A. July 14th.

Q. July 14th? What was the amount of that?

A. \$33,350.14.

Q. Have you anything there to show the daily balances at that time, the date that check was drawn?

A. I have.

Q. What was that?

A. \$5000, and the checks came off.

Q. The daily balances with that would have been \$38,000, wouldn't it?

A. Well, there were two checks that day.

Senator Hanger: Wait a minute, before the \$33,350.14 came off?

A. \$41,117.84.

Q. The check—was how much?

A. \$33,550.14, leaving a balance of \$7567.70.

Q. Now, when was the next check?

A. The next one was on October 13th, \$2567.70, which left a balance of \$5000.

Q. \$2700 taken out?

A. \$2567.

Q. Leaving a balance of \$5000 there?

A. Yes, sir.

Q. What was the next check drawn?

A. The next check was drawn on April 16th.

Q. April 16th, after October what time?

A. October 13th.

Q. October 13th, what was the amount of that check?

A. \$110,000.

Q. Now, let's get the time between those checks, the first one was from April to May, about eleven months, wasn't it,—no, June to May, about eleven months?

A. All right.

Q. That the money stayed in the bank. Now, the next was in October, was it?

A. No, sir, May 16th to July 14th.

Q. That is a little more than sixty days, or about sixty days?

A. All right.

Q. Now, then, the next was in October some time, wasn't it?

A. October 13th.

Q. That was some ninety days, wasn't it?

A. Approximately, yes, sir.

Q. Now, from October 13th until when, the next May?

A. April, until April 16th.

Q. Now, how many months is that?

A. About six months, or five months.

Q. Six months, isn't it,—October, November, one, December, two—

A. All right, six months.

Q. All right, then, the next check, was that the last one, in April?

A. April 16th, then July 11th.

Q. July 11th, that would be about ninety days again, wouldn't it?

A. Yes, sir.

Q. Approximately. Now, is that the last?

A. July 13th.

Q. July 13th was another check?

A. It was.

Q. For how much?

A. \$20,000.

Q. \$20,000? When was the next check?

A. July 14th.

Q. July 14th, how much?

A. \$99,000.

Q. That was in 1917, wasn't it?

- A. It was, yes, sir.
- Q. Just one,—just a few days before the beginning of this Legislature, wasn't it?
- A. I don't know when the Legislature began.
- Q. The Legislature met about the 1st of August. This \$99,000 was checked out about that date. What was the exact date of that \$99,000?
- A. July 14, 1917.
- Q. What was the date of the last check?
- A. The date of the last check?
- Q. Yes.
- A. What I have been reading, July 14, 1917.
- Q. Now, any balance left?
- A. \$15,000.
- Q. \$15,000? Any other checks since then?
- A. No, sir.
- Q. \$15,000 there yet?
- A. It is.
- Q. Of the Secretary of State's funds in the Temple State Bank?
- A. Yes, sir.
- Q. Let me see. To go back just a minute, please; let's see about those checks in July. What was the first check in July for?
- A. July 11th, \$230,000.
- Q. \$230,000. July 14th, how much?
- A. \$99,841.70.
- Q. \$99,841.70. That's three hundred and what?
- A. Twenty-nine thousand.
- Q. \$29,870, isn't it?
- A. Eight hundred and forty-one dollars.
- Q. Eight hundred and forty-one dollars. Now, was there another check after that?
- A. Twenty thousand dollars between that.
- Q. Twenty thousand between that? That would make how much—four hundred and how many thousand?
- A. Four hundred and thirty-nine.
- Q. Four hundred and thirty-nine?
- Senator Hanger: Three hundred and forty-nine, General.
- Q. Let's go back; I think we can get it—I am ordinarily good at figures.
- A. Three hundred and forty-nine?
- Senator Hanger: Three hundred and forty-nine, yes.
- Q. No. How much was the first of it?
- Senator Hanger: Two hundred and thirty; the next was ninety-one.
- A. \$349,841.70.
- Q. \$349,841.70, leaving how much in the bank still?
- A. \$15,000.
- Q. Making a total of three hundred and fifty-four thousand and something, isn't it?
- Senator Hanger: Sixty-four.
- A. \$354,841.70.
- Q. Now, there were no deposits made during that period, were there?
- A. One \$10,000 deposit.
- Q. One \$10,000 deposit—then you had in that bank at one time at least three hundred and fifty-four thousand dollars belonging to the Secretary of State—that is, belonging to the State and deposited by the Secretary of State, that is true, isn't it?
- A. That is correct.
- Q. And that was in this last July, just before the Legislature convened?
- A. Yes, sir.
- Q. When was that large deposit made, the twenty-ninth of May?
- A. The twenty-ninth of May.
- Q. The twenty-ninth of May they deposited in your bank \$250,000 at one time, didn't they?
- A. Yes, sir.
- Q. Now, will you turn to the account of the Temple State Bank with the Commissioner of Insurance?
- A. All right.
- Q. When did he make his first deposit at your bank?
- A. September 18th.
- Q. Of what year?
- A. 1916.
- Q. 1916? How much did he deposit?
- A. \$3,035.
- Q. Just read the items of account, please, all the way down.
- A. September 28th, deposit, \$1,595.
- Q. I meant the items of deposits, when I said items of account.
- A. October 2d, \$1,307.50; October 16th, \$540; October 20th, \$672.50; October 25th, \$922.50; October 27th, \$262.50; October 28th, \$270; November 3d, \$377.50; November 4th, \$945; November 6th, \$145; November 10th, \$500; November 11th, \$540; November 13th,



\$185; November 15th, \$572.50; November 17th, \$215 and \$930; November 20th, \$180; November 23d; \$867.50; November 27th, \$342.50; November 29th, \$827.50; December 2d, \$245; December 4th, \$322.50; December 6th, \$962.50; December 8th, \$392.50; December 11th, \$715; December 14th, \$850; December 15th, \$242.50; December 18th, \$617.50; December 20th, \$872.50; December 26th, \$632.50; December 29th, \$1,230; January 2d, 1917, \$417.50; January 5th, \$502.50 and \$647.50; January 12th, \$137.50; January 15th, \$155; January 17th, \$560; January 19th, \$297.50; January 22d, \$285; January 24th, \$702.50; January 26th, \$157.50; January 29th, \$192.50; January 31st, \$770; February 2d, \$482.50; February 5th, \$190; February 7th, \$697.50; February 9th, \$350; February 13th, \$317.50; February 14th, \$400; February 16th, \$507.50; February 19th, \$232.50; February 21st, \$705; February 26th, \$462.50; March 3d, \$793.50. That is all.

Q. Have you totaled them to see the amount? Well, we won't take time to do that now.

A. It won't take but a second.

Q. We will do that a little bit later. Take the drafts on that—the checks, how many?

A. Two of them.

Q. Two of them?

A. December 4th, \$15,790.

Q. When was the other one made?

A. March 10th, \$16,478.50.

Q. Now, when did that account begin?

A. September 18, 1916.

Q. September 18, 1916; and the first check was December 4th, and the next one was, you say, when?

A. March 10th.

Q. Was the account closed then?

A. It was.

Q. Is there any balance there now?

A. No, sir.

Senator Hanger: March 10, 1917.

Q. I believe you say there is a balance—you stated there is a balance in the Governor's account, of twelve hundred and some dollars.

A. It was, yes, sir.

Senator Hanger: What was the exact amount?

A. Twelve hundred ninety-seven dollars and fifty cents.

Q. \$1,297.50. And a balance in the Secretary of State's account of how much you say?

A. Fifteen thousand.

Q. Fifteen thousand; and no balance in the Commissioner's?

A. Correct.

Q. What was the date of the last examination of your bank?

A. Let me see; it was July 20th, I believe.

Q. July 20th?

General Crane: Mr. President, in order to aid us in the examination of this witness, we will ask that you send a messenger—it is all that is necessary—to ask the Banking Commissioner to send us up the records, in the custody of the Court or the messenger, of the examinations of the Temple State Bank. It may facilitate our work very much. There will be no objection to bringing them, I am sure, because they were brought very readily before.

Q. Now, the Governor had a Special or Escrow account, as well, didn't he?

A. A special account, yes, sir.

Q. Isn't it marked "Escrow?"

A. No, sir.

Q. Well you know the bank entered into an agreement about it, don't you—did you answer that question?

A. I have been hearing something about it lately. I don't know—

Q. (Interrupting). Now, I am not asking you what you have been hearing. I asked you if you didn't know there was an agreement between the bank and the Governor and the Dayton Lumber Company. Do you or not know that there is an agreement with the bank?

A. I have not seen it, no, sir. I do not know that there is. Somebody has got that account, General.

Q. You mean you haven't it?

A. No, I had it here a minute ago.

Q. It must be there some place. We have none of them here. Just take your time and look for it.

A. (After making search). It is not here.

Q. Well, leave that out for the present, then; let's go back. They will help you find it. The account of the Banking Commissioner, as well as some parts of the account of the Secretary of State, they opened them

up by depositing money in the American National Bank, or some other bank in Austin, to the credit of the Temple State Bank, didn't they?

A. I don't believe that the Banking Commissioner's account was carried that way.

Q. It was carried by making the first deposit in the Citizens State Bank, wasn't it, and afterwards transferred to the American National Bank?

A. I don't remember about that. Most of those were mailed in, as I remember it.

Q. You don't remember that part of it?

A. No, sir.

Q. Can't you turn to your Note Register there and find any particular day how much Governor Ferguson owed that bank?

A. I can tell on the— No, I can tell the day that the settlement was made and the four notes were put in the bank.

Q. Well, let's get back behind that.

A. I can't tell on any one day, General, because the notes were made at different times and recorded in the book at different times and it would come on different pages, you see.

Q. Well, what were those \$37,000— I will tell you, let's go back then a bit, let's take up the Ranch account and see what it stated its account was. Have you got that?

A. No, it would be the same as the Governor's—it would run all the way through the book.

Senator Hanger: He didn't catch you. The Ranch account.

Q. Not the notes, the overdrafts; we will get to the notes a little bit later; perhaps we can get the notes this way. Now, on January 1, 1915, what did the Bell-Bosque Ranch owe the bank, if it owed it anything, by way of overdrafts?

A. It appears that we owed them forty-five cents.

Q. On the first of January?

A. Yes, sir.

Q. Well, now let's see. Where do the overdrafts begin, for they do begin, don't they?

A. January 7th.

Q. January 7th, an overdraft begins. Now, just read those overdrafts as they occur, will you, or

perhaps my voice carries better than yours and I don't mind reading. Which is it here?

A. Start at the red.

Q. Now, on January 7th, did you say?

A. Yes, sir.

Q. Where do you get that?

A. (Indicating on sheet.) January 7th.

Q. I see. January 7th, the Bell-Bosque Ranch or Farm—Stock Farm owed your bank in overdrafts?—

Mr. Harris: (Interrupting.) What year?

General Crane: 1915, isn't it?

The Witness: Yes, sir.

Q. 1915, \$2597.95.

A. That's correct.

Q. Statement rendered on that day. I don't read them very well. That date you have over there is— Senator Hanger: It is made with a stamp and it blurs.

Q. What is that date?

A. January 7th, \$2597.95; January 9th, \$2838.57; January 15th, \$6236.96; January 16th, \$6242.71; January 18th, \$6272.75; January 20th, \$6402.45; January 26th, \$6404.70; January 30th, \$6406.40; February 4th, \$7263.85; February 5th, \$7326.75; February 6th, \$7506.50; February 8th, \$7595.79; February 9th, \$7635.44; February 10th, \$7691.69; February 11th, \$7714.39; February 13th, \$7791.10; February 16th, \$7817.98; February 13th, \$9516.53; March 5, 1916, \$9,527;—

Q. (Interrupting.) Well, this is 1916, isn't it, or was it 1915?

A. February, 1915, yes, sir.

Q. All right, go ahead.

A. March 16th, \$9527.68; March 17th, \$9539.68; April 3rd, \$9284.38; April 6th, \$9301.83. Then, April 12th, a credit balance of \$607.97; April 14th, \$605.47;—

Q. (Interrupting.) Well, you may say the credit balances then extend, varying from \$600 to—

A. (Interrupting.) To \$64, \$1000, \$900, \$800, \$182, \$157, \$30, \$24, \$15, \$114, \$112, \$52, \$337, \$90, \$1902.42, \$1529, \$1485.06, \$1465.31, \$1388.56, \$1189.31—

Q. (Interrupting.) You needn't read each one of those items.

A. All right. Seven hundred, five hundred, three hundred, two hundred, one hundred, sixty-eight, sixty, fifty, thirty-two.

Q. Now the next page where the overdrafts begin.

A. All right. November 26th, \$30; December 30th, \$50; January 7th, 1916, \$109; January 12th, overdrafts, \$4242.91.

Q. Now, the overdrafts, then. Look here and see that I get these right, because I may not get your figures. January 12th, the overdraft of the Bell-Bosque Ranch is \$4,242.91.

A. That is correct.

Q. January 14th, \$7909.60; January 15th, \$8137.80; February 3rd, \$8054.70; February 14th, \$5733.33; February 19th, \$5713.33; February 21st, \$4749.16; February 23rd, \$5236.88; February 25th, \$9095.80; February 26, \$9078.55; February—March 3, 1916, \$8167.88; March 7, 1916, \$7811.78; March 21st, \$7526.34; March 28th, \$10,505.59; March 30th, \$10,927.94; and then April 1st, \$6982.41; April 11th, \$12,511.20; April 12th, \$12,721.92; April 19th, \$13,280.84; April 26th, \$14,439.93. Now, on this page, and during that period, there was a statement rendered to the Bell-Bosque Ranch on January 4, 1915, wasn't there?

A. January 15th.

Q. January 15, 1916.

A. All right.

Q. Another statement rendered February 23, 1916, wasn't there?

A. Yes, sir.

Q. Another statement rendered February 25th, wasn't there?

A. All right.

Q. Another statement rendered February—

A. (Interrupting.) April.

Q. April 1st, and another statement rendered April 19th, and still another statement rendered a week later, April 26th, wasn't there?

A. Correct, yes, sir.

Q. And then on April 28, 1916, there was an overdraft of the Bell-Bosque Ranch of \$13,177.51?

A. That is correct.

Q. Now, have you got it coming on down later than that?

A. All right, May 1st, the account was balanced even up.

Q. May 1st, yes.

Senator Hanger: What was that?

General Crane: May 1, 1916.

A. 1916. May 12th, an overdraft of \$13,178.27.

Q. Now, I can get that right here.

A. Yes, sir.

Q. On May 12th, there was an overdraft of the Bell-Bosque Ranch of \$13,178.27; May 13th, 1916, \$14,825.77; May 20th, \$15,210.92; May 23rd, \$15,152.52; May 23-24th, \$15,170.92; May 25th, \$15,330.76; June 1st, \$15,323.66; June 6th, \$16,140.25; July 5th, \$15,917.29; September 13th, \$15,910.54; September 26th, \$19,290.98; October 23rd, \$18,181.95—

A. (Interrupting.) That is October 13th.

Q. October 13th, that is right. October 14th, \$19,295.15; October 18th, \$20,149.38; October 21st, \$20,645.98; October 31st, \$20,708.46; November 11th, \$20,899.98; November 13th, \$21,367.63; November 14th, \$21,571.25; November 15th, \$23,098.41; November 16th, \$22,913.05; November 17th, \$23,913.05; November 18th, \$24,064.30; November 24th, \$24,195.70; November 28th, \$24,306.39; then on December 9th, it is reduced to \$574.16.

A. Credit balance.

Q. Yes, that is right; that is a credit balance, which credit balances range in varying amounts of four thousand, and two thousand, and a few hundred dollars, and eighty-seven dollars, and fifty-nine dollars, and a thousand dollars, on down until April 16, 1917, that is, isn't it?

A. No, sir, that is still—

Q. It must be 1916, because that is May, 1916?

A. Yes, 1917.

Q. Yes. Now, let's see, where is the rest of it?

A. Let's see, that's on the other side.

Q. Well, now, you remember about the dates of these settlements here, don't you? There was a settlement here sometime in February, to wipe out that overdraft, wasn't there?

A. There was a deposit there of \$25,000, yes, sir.

Q. Well, wasn't there a note made for the Bell-Bosque Ranch about that time?

A. I don't remember.

Q. What was the date of the settlement with Governor Ferguson in which he gave the Bell-Bosque Ranch note, wasn't it in February, 1917?

Senator Hanger: Look at one of



those books there, General, I guess you can see.

The Witness: No, that was in January, 1917.

General Crane: Well, January, 1917, but there is no entry here indicating any deposit about that time, is there?

A. You are not in January yet, General; this is March and April—that is April, I mean.

Q. Oh, we had passed January, hadn't we? January ought to come before March or April?

A. All right.

Q. There isn't any item on that statement showing the settlement of the Bell-Bosque Ranch by the giving of those notes of \$37,500 is there, on that statement?

A. No, sir.

Q. No indication of that at all. Well, we will get that out of some other document probably. The \$25,000 credit of date December 9th, you recall what that was? Wasn't that a note of Governor Ferguson's which he executed for the Bell-Bosque Ranch and he also executed one of his own about the same time?

A. As I remember it, that is a note of the Bell-Bosque Ranch, yes, sir.

Q. Yes. Now, will you take Governor Ferguson's personal account there again and let's get the amount of the overdrafts on a given date of himself and the Bell-Bosque Ranch. Will you turn to June 1, 1916, and see what his overdraft was, if he had one?

A. June 1st?

Q. Yes.

A. \$31,109.36.

Q. Thirty-one thousand and how much?

A. One hundred nine dollars and thirty-six cents.

Q. Now, on June 1st, the Bell-Bosque overdraft was \$15,323.66, wasn't it?

A. That is correct, yes, sir.

Q. Now, will you add those two items and let's see what the overdraft of the two was at that time, without reference to their notes?

A. Repeat your amount, General.

Q. \$15,323.66.

A. \$46,433.02.

Q. Well, now, suppose you look at October 18th and see what his overdraft was, the same year.

A. \$36,410.74.

Q. Well now, here on October 18th, the same date, it is \$20,149.38, isn't it?

A. \$20,149.38, that is correct.

Q. The total?

A. \$56,560.12.

Q. Suppose you take November 28th and see what that is.

A. \$24,772.73.

Q. And this is \$24,306.39, isn't it?

A. \$24,306—

Q. Making a total of forty-eight thousand and something. Now, will you turn to his overdraft where it amounts to forty-four thousand and more, some point, and see what date that is?

A. I will have to go back further than that. All right; January 15, 1916.

Q. January 15, 1916?

A. Yes, sir.

Q. Where is this date? (Referring to paper).

A. That is back on another page (referring to paper). Here it is over here (indicating).

Q. That is \$4,242.91; that makes the \$48,000 again. What is his on April 19, 1916?

A. \$32,756.

Q. I see. Can you not state what the amount of the Bell-Bosque Ranch notes was on January 1, 1915, and on the succeeding dates?

A. No, sir, I cannot.

Q. All the overdrafts that we figured, the highest point we have noted there is \$56,000—isn't it,—of the two?

A. That was both the ranch and the Governor's personal account.

Q. I understand that, I asked that—my question was the highest point of the two overdrafts?

A. You are correct.

Q. The highest point of Governor Ferguson's own overdraft was \$44,000, wasn't it?

A. That is correct, yes, sir.

Q. That is irrespective of the notes he owed,—isn't that true?

A. Well, most of the notes were made to take care of those overdrafts.

Q. No, wait just a minute, now, let us not confuse things. Does not the term "overdraft" on your book, mean an overdrawn account, there is not a note involved in it?

A. It does, yes, sir.

Q. Well, that is what I am asking you?

A. However, the notes and overdrafts did not always exist together.

Q. I am not asking you that, if the notes and overdrafts always existed together, I am asking you if the overdrafts of \$44,000 did not indicate that he owed that much on account,—that is right, isn't it?

A. That is correct.

Q. Now, if on some day there were any notes existing, to get the amount of his personal indebtedness you would add the amount of the account and the notes together, wouldn't you?

A. That is right, yes, sir.

Q. All right. Now, the average—(to the Reporter): Take that out please. The capital stock of that bank was, on that date, \$125,000, wasn't it?

A. That is correct, yes, sir.

Q. Thirty per cent of \$125,000 is—how much?

A. \$37,500, I believe.

Q. \$37,500? Then, the overdrafts of Governor Ferguson during the high marks there were in excess of thirty per cent of the capital stock of that bank—isn't that true?

A. That is right.

Q. Irrespective of the notes? Now, do you not know that it is a fact that Governor Ferguson and his wife owned the Bell-Bosque corporation, all of the stock except two shares, or something like that?

A. No, I don't know what per cent of the stock they owned.

Q. Did Governor Ferguson ever state that to you?

A. No, sir, he has not.

Q. Nor in your presence?

A. No, sir.

General Crane: Has the messenger returned, Mr. President?

The Chair: Yes, sir, and reports that the office is closed. The Commissioner is there, but it is Labor Day.

General Crane: The office is closed? Oh, Labor Day—I beg your pardon.

The Chair: It is Labor Day, the records which you desire are locked up and the bookkeeper is out.

General Crane: Yes, sir.

Q. We are confused a little about the date you gave, as to the date the Banking Commissioner's account was

opened—just get it for our accommodation?

A. (Referring to records). September 10, 1916.

Q. Now, aren't you mistaken about that?

A. That is according to my record, General.

Q. Well, the Journal may be wrong, but the Commissioner of Banking wrote a long letter which we have here in the record, in July, 1915—July 23d, in which he was advising the Temple State Bank that he had deposited money. Have you the account with the Austin National Bank?

Mr. Hanger: No, General, excuse me, he has not found the Patterson account, that is where the trouble is.

A. You want the Patterson account?

Q. No, I didn't ask for the Patterson account, I asked for the date when the Insurance Commissioner first began to deposit money in the Temple State Bank?

A. All right.

Q. Now, you stated it was September, 1915. Aren't you mistaken about that?

A. That was when the account of Charles O. Austin, Commissioner, began in the bank.

Q. Did which?

A. That was when the account of Charles O. Austin, Commissioner, began in the bank.

Q. Well, now, I didn't ask you about that, I asked you about the account of the Commissioner?

A. Well, now, General, those are two accounts, you understand.

Q. Well, I understand. My question to you wasn't when the Austin account was opened, but when the Insurance Commissioner first began to deposit money in the Temple State Bank?

A. All right. John S. Patterson, Banking Commissioner, opened account on July 28, 1915.

Q. Yes? Well, now, you haven't given all the items of the Banking Commissioner's account, have you?

A. I have not read Mr. Patterson's part of it, no, sir.

Q. Well, let's get that please?

A. All right. (Referring to records.) On July 28, 1915, a deposit of \$490; August 10, a deposit of \$3,475; September 4th, \$2,-

387.50; on September 17th, deposit, \$6,060; October 4th, deposit of \$1,805; October 18th, \$1,202.50; October 25th, \$1,640; October 30th, \$1,740; November 6th, \$1,385; November 9th, \$1,555; November 15th, \$1,900; November 20th, \$1,535; December 2d, \$2,255; December 13th, \$1,750; December 18th, \$1,537.50; January 3, \$2,507.50; January 11, 1916, now, \$587.50; January 25th, \$1,530; February 2d, \$1,295; February 5th, \$1,402.40; February 15th, \$1,427.50; March 3d, \$2,857.50; March 7th, \$1,300. The account then closed. Then on March 15th it was opened up by a deposit of \$2,997.52.

Q. March 15th? What was the date of the death of Mr. Patterson?

A. I don't remember.

Q. Six months later. Well, go ahead.

A. March 21, \$972.50; March 25th, \$1,927.50; April 1st, \$1,250; April 10th, \$590; April 18th, \$382.50; April 22d, \$1,207.50; May 13, \$1,765 and \$1,460; May 24th, \$3,585; June 7th, \$2,385; June 10th, \$1,662.50; July 1st, \$1,840, \$1,885 and \$1,337.50; July 12th, \$790; July 19th, \$925; July, 29th, \$1,717.50; August 25th, \$1,625; August 26th, \$4,200 and \$470; September 2d, \$1,210. Account closed out on September 5th.

Q. What was the amount of those deposits?

A. Well, there are checks that came in between those, General, can't tell without listing them all.

Q. What is the total deposits?

A. Well, each daily deposit, you understand, we never add up all the money a man puts in the bank to find out how much he has.

Q. Now, I am going to ask you, Mr. Blum, between this and tomorrow morning to give me the total of each account, all the money that was deposited by each officer during the year in your bank?

A. During one year or two years?

Q. During the whole time of doing business with you, but more particularly the Secretary of State's account there?

A. Yes, sir.

Q. Did you mean to give us only Mr. Church Bartlett's account, or both accounts?

A. I gave you McKay's and Bartlett's both.

Q. You gave us McKay's and Bartlett's both? Now, you have made no omission in either one?

A. No omission, no, sir.

Q. Haven't you a letter from the Banking Commissioner advising you of the opening of the account down here in Austin—Banking Commissioner Patterson?

A. I don't know whether I have or not.

Q. Did you ever look for it?

A. No, sir.

Q. Do you not know that the account that Mr. Patterson opened, and I asked you about it on direct awhile ago, don't you know that he first made a deposit in the Citizens Bank and Trust Company, in Austin?

A. No, sir, I do not.

Q. To the account of the Temple State Bank?

A. I don't know how he made his first deposit, no, sir.

Q. And it was afterwards changed to the American National Bank?

A. No, sir.

Q. Well, you do know that the Temple State Bank got credit for two per cent interest on all of the deposits that Mr. Patterson as Commissioner made in the Austin banks, don't you?

A. If it stayed in the bank he did, yes, sir.

Q. All the money that he deposited in the Austin banks to the credit of the Temple State Bank, the Temple State Bank got two per cent interest on daily balances?

A. While it was in the bank, yes, sir.

Q. Why to be sure, while it was in the bank—there wouldn't be daily balance if it wasn't in the bank, would there? Now, have you any of the letters that Governor Ferguson wrote to your bank, or to you, or to any of the officers of the bank, in reference to his accounts?

A. You didn't ask for them, did you?

Q. The subpoena duces tecum does ask for them, doesn't it?

A. I believe not.

Q. Well, we may be mistaken, but we think it does. Can you get them if they are there, without special service on you of another subpoena?

A. I can send for them, yes, sir.

Q. Yes? Well, now, will you do that, Mr. Blum?

A. Explain what you want, General?

Q. All the letters that Governor Ferguson has written to the bank or any answers in respect to his accounts.

A. All right.

Q. Either his special, his personal, or any of the State accounts.

Mr. Hanger: You had better make a memorandum, General, of what you want.

General Crane: All right.

Q. And also in reference to the Bell-Bosque Ranch; and also the Patterson letters, Mr. Blum, written to the bank, or to the Temple State Bank, particularly the one of July 23, 1915?

General Crane: Mr. President, I believe we will facilitate the examination by adjourning now until tomorrow, because the documents for which we have sent are not accessible, and the Banking Department is closed; and then the witness has not made the calculations—got up a list of the notes that we wanted, and we want to complete the examination on this point at once before we go further.

Mr. Hanger: The Banking Department being closed on account of Labor Day.

(Senator Lattimore thereupon moved that the Senate, sitting as a Court of Impeachment, do now adjourn until tomorrow at ten o'clock a. m.; which motion prevailed and it was so ordered.)

#### In the Senate.

President Pro Tem. Dean in the chair.

#### Simple Resolution No. 8.

Whereas, Under the provisions of Article 6027 of Revised Statutes all officers appointed by the Governor and elected by the Legislature the method of whose removal is not specifically provided by law may be removed by the Governor for good and sufficient cause to be spread on the records of his office and reported to the next session of the Legislature;

Whereas, Wilbur P. Allen was nomi-

inated by the Governor as a member of the Board of Regents at the Regular Session of the Thirty-fifth Legislature and was confirmed and appointed thereto by the Senate; and

Whereas, The Senate is of the opinion that the acts of said Allen in obtaining said confirmation and appointment were such as to impose upon the Senate; and,

Whereas, The acts of said Allen since his said appointment have been so injurious and hurtful to the said University and so contrary to what those of a member of the Board of Regents should have been and so contrary to what the said Allen promised the Senate and members thereof that they would be if he was confirmed and appointed;

Now, Therefore, the Senate of Texas requests the Honorable W. P. Hobby, Acting Governor of Texas, to set a day upon which the said Allen shall appear before said Governor, and a committee from the Senate shall appear before the said Governor and present to him reasons believed by the Senate to be good and sufficient cause for the removal of said Allen, to the end that said Allen may be removed by the Governor in conformity with the law.

STRICKLAND.

PAGE.

The resolution was read and Senator Page moved its adoption.

Pending discussion by Senator Hall, several letters relating to matters contained in the resolution were offered with a request that same be read by the Secretary.

(Upon request of Senator Hall, one of the letters was ordered printed in the Journal and will be found in the Appendix today.)

Pending the reading of same Senator Dayton objected to the further reading and requested that the question be determined by a vote of the Senate.

The question was put by the Chair and the reading was ordered to be continued by the following vote:

Yeas—13.

|                     |             |
|---------------------|-------------|
| Bailey.             | Hudspeth.   |
| Bee.                | McCollum.   |
| Buchanan of Scurry. | Page.       |
| Clark.              | Smith.      |
| Hall.               | Strickland. |
| Harley.             | Westbrook.  |
| Hopkins.            |             |



## Nays—9.

|          |                     |
|----------|---------------------|
| Dayton.  | Johnson of Hall.    |
| Dean.    | Johnston of Harris. |
| Decherd. | Lattimore.          |
| Floyd.   | Robbins.            |
| Gibson.  |                     |

## Present—Not Voting.

|                   |         |
|-------------------|---------|
| Alderdice.        | Suiter. |
| Buchanan of Bell. |         |

## Absent.

|            |           |
|------------|-----------|
| Caldwell.  | Parr.     |
| Henderson. | Woodward. |
| McNealus.  |           |

Simple Resolution No. 8, pending.

## Simple Resolution No. 9.

Whereas, We, the members of the Senate of Texas, fully realizing that organized labor has done great and good things, not only for organized labor, but for all laborers within our great State; and

Whereas, This is Labor Day, said day being set apart as a day to be observed in honor of all laborers;

Therefore, Be it resolved by the Senate of Texas, that this Senate and each member hereof extend hearty greeting to all laborers of Texas and of our nation and that when this body shall adjourn on this day that it do so in honor of the great body of laborers throughout our State and Nation.

SUITER.

The resolution was read and adopted.

## Refusal to Adjourn.

At 5:35 o'clock p. m. Senator Hudspeth moved that the Senate adjourn until 10 o'clock tomorrow morning.

The motion was lost by the following vote:

Yeas—4.

|        |           |
|--------|-----------|
| Clark. | Hudspeth. |
| Hall.  | McCollum. |

Nays—20.

|                     |           |
|---------------------|-----------|
| Bailey.             | Caldwell. |
| Bee.                | Dayton.   |
| Buchanan of Bell.   | Dean.     |
| Buchanan of Scurry. | Decherd.  |

|                     |             |
|---------------------|-------------|
| Floyd.              | Page.       |
| Gibson.             | Robbins.    |
| Hopkins.            | Smith.      |
| Johnson of Hall.    | Strickland. |
| Johnston of Harris. | Suiter.     |
| Lattimore.          | Westbrook.  |

## Absent.

|            |           |
|------------|-----------|
| Alderdice. | McNealus. |
| Harley.    | Parr.     |
| Henderson. | Woodward. |

## Simple Resolution No. 8.

(Pending.)

Action recurred upon S. R. No. 8, relating to the request for the resignation of Wilbur P. Allen as a member of the Board of Regents of the State University.

Senator Dayton moved the previous question on the adoption of the resolution, which motion being duly seconded, the main question was ordered.

Action recurred upon the adoption of the resolution and Senator Bailey moved to reconsider the vote by which the previous question was ordered.

Senator Page moved to table the motion to reconsider and the motion to table prevailed by the following vote:

Yeas—12.

|                     |                     |
|---------------------|---------------------|
| Bee.                | Gibson.             |
| Buchanan of Scurry. | Johnson of Hall.    |
| Dayton.             | Johnston of Harris. |
| Dean.               | Page.               |
| Decherd.            | Robbins.            |
| Floyd.              | Strickland.         |

Nays—10.

|           |            |
|-----------|------------|
| Bailey.   | Hudspeth.  |
| Caldwell. | Lattimore. |
| Clark.    | Smith.     |
| Hall.     | Suiter.    |
| Hopkins.  | Westbrook. |

Present—Not Voting.

Buchanan of Bell.

## Absent.

|            |           |
|------------|-----------|
| Alderdice. | McNealus. |
| Harley.    | Parr.     |
| Henderson. | Woodward. |
| McCollum.  |           |

Action recurred upon the resolution and the same was adopted by the following vote:

Yeas—18.

|                     |                     |
|---------------------|---------------------|
| Bailey.             | Johnson of Hall.    |
| Bee.                | Johnston of Harris. |
| Buchanan of Bell.   | Lattimore.          |
| Buchanan of Scurry. | Page.               |
| Dayton.             | Robbins.            |
| Dean.               | Smith.              |
| Decherd.            | Strickland.         |
| Floyd.              | Suiter.             |
| Gibson.             | Westbrook.          |

Nays—4.

|           |          |
|-----------|----------|
| Caldwell. | Hall.    |
| Clark.    | Hopkins. |

Present—Not Voting.

Hudspeth.

Absent.

|            |           |
|------------|-----------|
| Alderdice. | McNealus. |
| Harley.    | Parr.     |
| Henderson. | Woodward. |
| McCollum.  |           |

Reason for Being Present and Not Voting.

I am recorded as present and not voting on Resolution of Impeachment of Wilbur P. Allen for reason I am convinced on account of peculiar wording of statute giving power of appointment to the Senate that it would necessarily follow that power of removal is vested only in the Senate and not the Governor.

HUDSPETH.

#### Pages and Porters Appointed.

The Chair, President Pro Tem. Dean announced the appointment of the following:

Pages: Berkley Bell, Stuart Francis, John Hurley, Fielding Jones, Dick McNutt, Eugene Potter, Robt. Robison, Lonnie Fuller, L. Brooke Lemberg, A. W. Kennard.

Porters: Willie Carpenter, Buck Green, Andrew Murphy, Horace Nichols, Chester Odom, Tom Plummer, Tom White, E. G. Williams.

Senator V. A. Collins—Seated.

Senator Hudspeth moved that Sen-

ator V. A. Collins now be conducted to the bar of the Senate and qualify as a member of this body.

At this time the Chair laid before the Senate the opinion of the Attorney General as follows:

Attorney General's Office,  
Austin, Texas, Sept. 3, 1917.

Hon. W. L. Dean, President of the Senate Pro Tempore, Senate Chamber, Capitol.

Dear Sir: I am in receipt of yours of the third inst., as follows:

"The Senate has just adopted a verbal resolution asking you for an opinion as to the legality of the election of Hon. V. A. Collins of the 14th District, who was elected at an election held on August 27th, in pursuance of a proclamation by the Governor on August 24th. There is no contest presented to the Senate from the electors of the District; none of fraud—but merely a desire on the part of certain Senators to know the legality of said election."

Where an election, provided for in the constitution, as the one in question (Sec. 13, Art. 3) is called by the constituted authority and is held, ordinarily the candidate receiving a majority of the votes at said election and presenting proper evidence of his election, would be seated; and especially would this ordinarily be the case in the absence of a contest.

However this may be, the questions, both of fact and of law, are for the determination of the Senate, and its decision will constitute the unalterable law of the case.

With respect to your membership, any election is valid which a majority of the Senators present may, for any reason, adjudge to be so. This follows from the language of Section 8, Article 3, of the Constitution, wherein it is declared that "Each House shall be the judge of the qualifications and election of its own members." The specific grant of this power to each House is an express denial of it to the Courts or to precedent or subsequent legislatures. If the courts could control the matter, then the power of judging of "the qualifications and election" of the members would, plainly, be in the courts, and it would not be in the Houses where it is placed by this express language of the con-

stitution. Furthermore, if that were so, the judiciary would exercise a power expressly denied by Section 1 of Article 2, wherein it is said that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others." The fact that this power is placed in the two Houses by the constitution itself demonstrates the further fact that it is "properly attached" thereunto. If this power should be controlled by existing statutes, the anomaly would be presented of one Legislature binding a subsequent one in a matter committed to the two Houses as they may exist when the question arises. Suppose the Thirty-fourth Legislature had enacted a statute prescribing the conditions under which the new members of the Thirty-fifth Senate should be deemed to have been elected, or prescribing the conditions under which vacancies in the Thirty-fifth Senate should be filled, and the Courts, under this statute, should prevent a person presenting himself from taking his seat, or should unseat him afterwards, or should hold that some act of the Senate was invalid because of his participation therein; in all such instances is it not clear that the Thirty-fifth Senate itself would be denied the exercise of the power clearly vested in it by the constitution?

Judge Cooley, in his great work on Constitutional Limitations, at page 158 (Sixth Ed.), thus states the rule:

"There are certain matters which each house determines for itself, and in respect to which its decision is conclusive. . . . It decides upon the election and qualification of its own members."

See, also, Miller on The Constitution, 193; McDill vs. Canvassers, 36 Wis. 505; Luther vs. Borden, 7 Howard (U. S.), 1; People vs. Mahaney, 13 Mich. 481; State vs. Jarrett, 17 Maryland 309; Lamb vs. Lynd, 44 Pa. St. 336; Opinion of Justices, 56 N. H. 570; Covington vs. Buffett, 47 L. R. A. 622; Wills vs. Newell, 70 Pac. 405.

In *People vs. Mahaney*, supra, it was held that the correctness of the decision by one of the Houses, that certain persons had been chosen members, could not be inquired into by the courts. In that case a law

was assailed as void, on the ground that a portion of the members who voted for it, and without whose votes it would not have had the requisite majority, had been given their seats in defiance of law to the exclusion of others who had a majority of legal votes. In *State vs. Gilmore*, 20 Kan. 551, 27 Am. Rep. 189, it was held that the Legislature could not transfer to the courts its power to judge of the election or qualification of its members.

Upon reason and authority, therefore, I hold that the Senate itself is the exclusive judge of the validity of the election recently held in the Fourteenth Senatorial District. It may inquire into the fairness, vel non, of said election and seat the applicant for membership or not as it may please. If the Senate decides to seat the applicant, this adjudicates the validity of the election. The election is valid or void accordingly as this decision may be made and in reaching its decision upon the matter the Senate exercises its constitutional discretion from which there is no appeal. Consequently, there is no question for the Attorney General, or for the courts, to decide.

Yours truly,

B. F. LOONEY,  
Attorney General.

Senator Hudspeth moved that the Chair appoint a committee of three Senators to escort Senator-elect Collins to the President's stand for the purpose of having the oath of office administered, and that he take his seat as a member of the Texas State Senate; and on this motion Senator Hudspeth moved the previous question which was seconded and ordered.

The motion seating Senator Collins prevailed, and the Chair appointed Senators Lattimore, Bailey and Hudspeth as a committee to escort Senator Collins to the President's stand.

#### Adjournment.

At 6:15 o'clock p. m. the Senate, on motion of Senator Clark, adjourned until 9:20 o'clock tomorrow morning.

## APPENDIX.

## Petitions and Memorials.

Senator Page offered a numerous-ly signed petition from his district requesting a postponement of building any public institutions, especially the West Texas Agricultural and Mechanical College and Normal Colleges.

Houston, Texas, July 24, 1917.

W. P. Allen, Esq.,  
Littlefield Bldg.,  
Austin, Texas.

Dear Sir: I have your letter of July 23rd enclosing two letters to you of that date—one from Mr. H. P. Bickler, official stenographer of the Board of Regents at the Galveston meeting of July 12th and 13th, and the other from Mr. E. J. Matthews, Secretary of the Board of Regents.

It appears from the letter of Secretary Matthews that you did not vote for the removal of Professors Cofer, Matthews, Ellis or Lomax, who were investigated by the Board of Regents October 10, 1916, and who were confirmed in their acquittal by the so-called Dayton resolution of the State Senate.

It appears from Stenographer Bickler's letter, as well as Secretary Matthew's letter, that you moved, "to go on with the consideration of the University at Austin, where we can get the whole facts there."

I especially commend your language quoted by Stenographer Bickler, "I for one always stand ready, before any action is taken of any kind, to give everybody concerned a show and a hearing."

I am glad now to say that you did not "utterly disregard" the Dayton resolution. However, a review of the reported proceedings at the time, a consideration of the general results, and the lack of emphatic and reiterated demand by you that an investigation be made before discharging any of the faculty, would seem to excuse an honest mistake on my part in charging you with "utterly disregarding" the Dayton resolution.

I am sending a copy of this to the Austin American, San Antonio Express, and the Houston Post, which are the only papers, so far as I am informed, that printed the interviews

of July 19th, in which I charged Governor Ferguson, you and Regent Kelly with "utterly disregarding" the Dayton resolution.

Yours respectfully,  
WILL C. HOGG.

WCH-c

## THIRD DAY.

Senate Chamber,  
Austin, Texas,

Tuesday, September 4, 1917.

The Senate met at 9:20 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

|                     |                     |
|---------------------|---------------------|
| Alderdice.          | Hudspeth.           |
| Bailey.             | Johnson of Hall.    |
| Bee.                | Johnston of Harris. |
| Buchanan of Bell.   | Lattimore.          |
| Buchanan of Scurry. | McCollum.           |
| Caldwell.           | McNealus.           |
| Clark.              | Page.               |
| Dayton.             | Parr.               |
| Dean.               | Robbins.            |
| Decherd.            | Smith.              |
| Floyd.              | Strickland.         |
| Gibson.             | Suiter.             |
| Harley.             | Westbrook.          |
| Henderson.          | Woodward.           |
| Hopkins.            |                     |

Absent.

Hall.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Excused.

Senator McNealus for yesterday on account of important business, on motion of Senator Suiter.

Senator Henderson for yesterday on account of important business, on motion of Senator Lattimore.

## Oath of Office Administered.

At the request of the Chair Senator-elect V. A. Collins came forward and took the constitutional oath of office administered by the President Pro Tem., Senator Dean.

Senator Collins was then seated as